United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

74-1581

B

P/S

In The

United States Court of Appeals

For The Second Circuit

ROBERT R. FELTON and EDWARD J. EGAN,
Plaintiffs-Appellants,

vs.

WALSTON AND CO., INC., JAMES NISSAN MARINE MIDLAND BANKS, INC., MARINE MIDLAND BANK-WESTERN, MARINE MIDLAND BANK-NEW YORK, MARINE MIDLAND BANK-ROCHESTER, MARINE MIDLAND BANK-CENTRAL, MARINE MIDLAND BANK-SOUTHERN, MARINE MIDLAND BANK OF SOUTHEASTERN NEW YORK, N.A., MARINE MIDLAND BANK-NORTHERN, MARINE MIDLAND BANK-EASTERN NATIONAL ASSOCIATION, MARINE MIDLAND BANK-CHAUTAQUA, NATIONAL ASSOCIATION, MARINE MIDLAND-TINKER NATIONAL BANK, INC., DRYFUS-MARINE MIDLAND, INC., JOEL BROWNSTEIN, 3 I CO./ INFORMATION INTERSCIENCE, INC.,GERALD L. BRODSKY, MAURICE BRODSKY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), MEDISCHE REFERANTAN, (EXCERPTA MEDICA) N.V., INFONET (EXCERPTA MEDICA-RESCONA) N.V., ELTRAC (INFONET) N.V., PETER WARREN, MAIN LAFRENTZ AND CO., FRED VON EUGEN, S. KIM KESSLER AND GERALDINE KESSLER,
Defendants-Appellees.

UNITED STATES COURT OF APPEALS
FILED
JUL 31 1974
A. DANIEL FUSARO CLERK
SECOND CIRCUIT

On Appeal from the United States District Court for the Southern District of New York.

APPELLANTS' APPENDIX

Volume I, pp. 1a - 278a

ROBERT R. FELTON
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1

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Appendix

	Page
Docket Entries	1a
Class Action Complaint (Filed May 17, 1973)	9a
Notice of Motion to Dismiss Dated June 28, 1973	18a
Notice of Deposition of Robert Felton (Filed July 5, 1973)	20a
Stipulation Adjourning Deposition (Filed July 16, 1973)	21a
Cross-Motion for Order Amending Complaint (Filed July 11, 1973)	23a
Affirmation in Behalf of 3 I Co. in Opposition to Cross-Motion (Filed July 16, 1973)	24a
Notice of Motion by Marine Midland to Dismiss or for More Definite Statement (Filed July 16, 1973)	26a
Notice by Plaintiff to take Deposition of James Nissan (Filed July 19, 1973)	28a
Notice of Plaintiff to take Deposition of Walston and Co. (Filed July 19, 1973)	29a

Contents

Page

Reply Affirmation of Robert Felton in Support of Cross-Motion (Filed July 20, 1973) 30a

Notice of Motion by Joel Brownstein to Dismiss (Filed July 31, 1973) 32a

Notice by Plaintiff to take Deposition of 3 I Co. (Filed August 14, 1973) 34a

Amended Complaint - Class Action (Filed August 14, 1973) 35a

Notice of Motion by Marine Midland to Compel Plaintiff to Appear for Deposition (Filed September 5, 1973) 72a

Affidavit of Richard G. Lyon in Support of Motion Dated September 4, 1973 . . . . 73a

Exhibits Annexed to Foregoing Affidavit:

Exhibit A - Letter from Sullivan and Cromwell to Robert R. Felton Dated August 6, 1973 . . . . . 77a

Exhibit B - Letter from Robert R. Felton to Sullivan and Cromwell Dated August 10, 1973 . . . . . 78a

Exhibit C - Letter from Sullivan and Cromwell to Robert R. Felton Dated August 15, 1973 . . . . . 79a

Contents

Page

Exhibit D - Letter from Breed, Abbott and Morgan to Robert R. Felton and Sullivan and Cromwell Dated August 16, 1973 . . . . . 80a

Exhibit E - Letter from Sullivan and Cromwell to Robert R. Felton 81a

Exhibit F - Letter from Robert R. Felton to Sullivan and Cromwell Dated August 28, 1973 . . . . . 82a

Exhibit G - Letter from Robert R. Felton to Sullivan and Cromwell Dated August 31, 1973 . . . . . 84a

Answer of Defendant Joel Brownstein to Amended Complaint (Filed September 5, 1973) 85a

Answer of Defendant Marine Midland Bank to Amended Complaint (Filed September 5, 1973) 93a

Stipulation and Order Withdrawing Motion by Joel Brownstein to Dismiss Complaint (Filed September 10, 1973) 99a

Affidavit of Robert R. Felton in Opposition to Motion to Compel Plaintiff's Deposition (Filed September 12, 1973) 100a

Exhibit Annexed to Foregoing Affidavit-Letter from Leon, Weill and Mahony to Robert R. Felton Dated August 29, 1973 . . . . . 102a

Contents

	Page
Answer of Stichting Excerpta Medica to Amended Complaint (Filed September 13, 1973)	103a
Answer of Defendants Walston and Co. and James Nissan to Amended Complaint (Filed September 11, 1973)	108a
Notice of Motion by Plaintiff under Rule 23(c)(1) (Filed September 12, 1973)	113a
Affidavit of Robert R. Felton in Support of Motion	115a
Exhibit Annexed to Memorandum in Opposition to Class Action - Excerpts from Felton Deposition	123a
Answer of Main Lafrentz and Co. to Amended Complaint (Filed September 24, 1973)	160a
Order Directing Plaintiff to Appear for Deposition (Filed September 27, 1973)	166a
Answer of 3 I Co. to Amended Complaint (Filed September 28, 1973)	168a
Notice of Motion in Behalf of Marine Midland and Joel Brownstein to Adjourn Plaintiff's Class Action Motion (Filed October 10, 1973)	172a

Contents

	Page
Notice of Motion by Plaintiff for Leave to Serve an Amended Complaint (Filed November 5, 1973)	174a
Affidavit of Robert R. Felton in Support of Said Motion (Filed November 5, 1973) . .	176a
Proposed Amended Complaint Annexed to Affidavit of Robert R. Felton in Support of Said Motion	179a
Notice of Motion by Main Lafrentz for Summary Judgment (Filed November 5, 1973).	223a
Statement Pursuant to Rule 9(c) in Support of Said Motion Dated November 1, 1973 .	225a
Affidavit of Milton Kunen in Support of Motion for Summary Judgment	227a
Affidavit of Frank G. Warburton in Support of Said Motion Dated November 1, 1973	256a
Exhibit 10 Annexed to Said Affidavit - Work Sheet Consolidating Profit and Loss Statement Dated June 30, 1970 . .	258a
Table of Contents to Agreement and Plan of Reorganization Dated April 1969	259a
Paragraph 15(a) to (f) of Said Agreement . .	261a

Contents

	Page
Second Amendment to Said Agreement pp. 1 and 2	269a
3 I Co. Consolidated Balance Sheet Dated June 30, 1972 and 1971	271a
3 I Co. Consolidated Statement of Loss and Deficit for Years Ending June 30, 1972 and 1971	272a
3 I Co. Consolidated Statement of Changes in Financial Position for Years Ended June 30, 1972 and 1971	273a
3 I Co. Notes to Consolidated Financial Statements Years Ended June 30, 1972 and 1971	274a
Notice of Motion in Behalf of Main Lafrentz and Co. for a Protective Order (Filed November 9, 1973)	277a
Affidavit of Robert R. Felton in Opposition to Motion by Main Lafrentz for Summary Judgment (Filed November 9, 1973)	287a
Notice of Motion by Plaintiff for Leave to Serve an Amended Complaint Adding Egan as Co-Plaintiff (Filed November 9, 1973)	296a
Affidavit of Edward J. Egan in Support of Motion	299a
Affidavit of Robert R. Felton in Support of Motion	301a

Contents

	Page
Proposed Amended Complaint Annexed to Motion (Filed November 29, 1973) . .	303a
Affidavit of Milton Kunen in Opposition and Exhibits (Filed November 9, 1973) . .	348a
Affidavit of Bruce A. Hecker Annexed to Milton Kunen's Affidavit	355a
Affidavit of R.W. Foss in Opposition to Plaintiff's Motion Re: Amended Complaint (Filed November 7, 1973)	361a
Exhibit Annexed to Marine Midland's Memo in Opposition to Plaintiff's Motion for Class Action (Schedule of Plaintiff's Transactions in 3 I Stock)	367a
Affidavit of Robert R. Felton Directed to Main Lafrentz's Opposition to Plaintiff's Motion to Amend Complaint (Filed November 9, 1973)	368a
Additional Affidavit of Robert R. Felton Directed to Main Lafrentz's Motion for Summary Judgment (Filed November 9, 1973)	375a
Reply Affidavit of Robert R. Felton Directed to Marine Midland's Opposition to Plaintiff's Motion to Amend Complaint Dated November 11, 1973 . . .	377a

Contents

	Page
** Letter Dated April 30, 1971 from Brownstein to Brodsky	392a
** Brownstein Report on 3 I Company Dated September 24, 1970	393a
** Brownstein Report on 3 I Company Dated May 17, 1971	396a
** Brownstein Bulletin on 3 I Company Dated June 8, 1971	402a
** Letter from Brodsky to Brownstein Dated June 23, 1971	403a
** Brownstein Bulletin on 3 I Company Dated August 10, 1971	404a
** Brownstein Bulletin on 3 I Co. Dated September 24, 1971 and News Release Dated September 7, 1971	405a

---

Exhibits some of which are Annexed to Reply Affidavit of Robert R. Felton Dated November 11, 1973 and Plaintiff's Reply Memorandum Directed to Opposition to Class Action Motion (** Denotes that Exhibits appeared in both documents described above; * Denotes that document appeared only in Plaintiff's Reply Memorandum to Opposition to Class Action).

Contents

	Page
** Brownstein Bulletin on 3 I Co. Dated October 20, 1971 and News Release Dated October 18, 1971	407a
** Brownstein Bulletin on 3 I Co. Dated October 22, 1971 and News Release . .	409a
** Letter Dated November 1, 1971 From Jack A. Dalziel to Brownstein	411a
* 3 I Co. Consolidated Balance Sheets June 30, 1970, June 30, 1969	412a
* 3 I Co. Statement of Operations for Years June 30, 1970 and June 30, 1969 and Main Lafrenz Report Dated November 20, 1970	413a
* 3 I Co. Notes to Consolidated Financial Statement Dated November 20, 1970	414a
* 3 I Co.'s Consolidated Summary of Operations and Deficit for Years Ended June 3, 1972, 71, 70, 69, 68. . . .	415a
* Excerpt from 3 I Co. Form 10K for Fiscal Year June 30, 1969	416a
* Excerpt from 3 I Co. Form 10K for Fiscal Year June 30, 1972	417a
* Excerpt from 3 I Co. Form 8K for Quarter Ending September 30, 1972 . . .	418a

Contents

	Page
* Nissan Guaranty of $225,000 for 3 I Co. Loan Dated November 18, 1970 . . .	419a
* Covering Letter Dated September 28, 1971 Egan to Kengla Transmitting Brownstein Bulletin Dated September 24, 1971	420a
* Marine Midland Envelope and Postmark to Egan Transmitting Brownstein Bulletin Dated October 20, 1971 . .	421a
** Excerpts From Nissan Deposition . . .	422a
** Excerpts From Brownstein Deposition (Except for 432a-444a)	432a
Supplementary Affidavit of Robert R. Felton in Support of Plaintiff's Rule 23 Motion (Filed November 15, 1973) . . .	488a
Complaint (Filed November 29, 1973)	489a
Memo Endorsed on Complaint (Dated December 3, 1973)	502a
Notice of Motion by Main Lafrentz and Co. Dismissing Amended Complaint and for Summary Judgment (Filed December 13, 1973)	503a
Affidavit of Milton Kunen in Support of Motion	505a

Contents

	Page
Notice of Motion in Behalf of Arthur W. Elias, Marvin S. Riesenbach and Irving H. Sher to Dismiss Amended Complaint (Filed December 13, 1973) . .	519a
Affidavit of Jerold Oshinsky in Support of Said Motion	521a
Notice of Motion in Behalf of Marine Midland and Joel Brownstein to Dismiss Amended Complaint (Filed December 14, 1973)	523a
Notice of Motion in Behalf of Stitching Excerpta Medica to Dismiss the Amended Complaint (Filed December 18, 1973) .	525a
Notice of Motion in Behalf of 3 I Co. to Dismiss the Amended Complaint (Filed December 18, 1973)	528a
Answer of Walston and Co. to the Second Amended Complaint (Filed January 4, 1974)	529a
Transcript of Arguments Before Bonsal, D. J. Dated January 7, 1974	532a
Order and Memorandum Decision of the Court Below (Filed March 29, 1974) . . .	555a
Judgment of District Court (Filed April 3, 1974)	564a

CIVIL DOCKET
UNITED STATES DISTRICT COURT

DOCKET ENTRIES

Jury demand date:
by pltff. 5-17-73
" " 5/14/73

C. Form No. 106 Rev. CLASS ACTION

73 C 2200

TITLE OF CASE	ATTORNEYS
ROBERT R. FELTON AGAINST, .LSTON AND CO. INC. .MES NISSAN, .INE MIDLAND BANK NEW YORK, JOEL "DOE, LAST NAME G UNKNOWN AND FICTITIOUS AND 31 CO. INFORMATION INTERSCIENCE IC.	For plaintiff: ROBERT R. FELTON 42 Third Avenue, ~~XXXXXN.Y.~~ 11501 Mineola, PIONEER 6- 5711 For Deft: Kave Scholer Fierman Hays&Handler (Main LaFrentz & Co) 425 Park Ave NYC10022 PL 9-8400 For defendant: Leon Weill & Mahony 261 Mad Av1,NYC 10016 Mu 7-5707 deft 3i Co Shea Gould Climenko & Kramer 330 Mad Av,NYC 10017 Mo 1-3200 deft Medische Referaten & Stitching Excerpta Sullivan & Cromwell 48 Wall St,NYC 10005 Ha 2-8100 deft Marine Midland Bank ,Joel Brownp stein Breed,Abbott&Morgan(Wolston&Co.Inc&James Nis 1 Chase Manhattan Pl.NYC10005 944-4800 sen
: Deft: nderson Russell&Kill,P.C.(Riesenbach&Elias) 0 Fifth Ave.NYC10020 541-8100	

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		5/17/73	Felton	15 —	
			5/17/73	"		15 —
J.S. 6 mailed /	Marshal		5/17/73	Felton Fees	5 —	
						5 —
Basis of Action: S.E.C.ACT. 1933&34	Docket fee					
	Witness fees					
Action arose at:	Depositions					

ROBERT R. FELTON VS. WALSTON & CO. INC. ET-AL

Docket Entries

73 C 2220 2a

DATE	PROCEEDINGS	Date Order or Judgment Not
May17-73	Filed Complaint. Issued Summons.	
y 17,73	Filed order appointing person to serve process, Clerk: Frank Addis 132-31 83rd Street. Ozone Park, N Y.	
ay29-73	Filed summons and entered marshal's return served on Joel Doe, by certified MarineMidland Bank-New York, Walston and Co.Inc. & James Nissan by Frank Addis on 5-22-73.	
un7-73	Filed summons and entered marshals' return served on 3 I Co. by David Trenone on 5-22-73.	
n 13,73	Filed Stip and order extending Marine Midland Bank time to answer until July 13,73. SO ORDERED. BONSAL,J.	
un.18,73	Filed Stip and order extending time to answer until July 2,1973. SO ORDERED. BONSAL,J.	
l.3,73	Filed notice of motion to dismiss, Ret. Jul.16,73 at 9:30 a.m.	
l.3,73	Filed memo in support of motion to dismiss.	
l.5,73	Filed notice of deposition of Robert Felton by deft. Marine Midland Bank-N.Y.	
l.11,73	Filed notice of ~~motion~~ cross motion, for order amending comp. Ret. Jul.30,73 at 9:30 a.m.	
l.11,73.	Filed memo in opposition to deft. motion to dismiss.	
l 16-73	Filed Deft. 3 I Co.Inf.Interscience,Inc.Affirmation in opposition to Motion for Leave to serve an amended Complaint.	
ul 16-73	Filed Deft.Marine Midland Bank-NY Notice of Motion to dismiss or for more definite statement	
ul 16-73	Filed Memorandum in support of Motion to dismiss or for a more definite statement.	
ul 12-73	Filed Stip and Order adjourning Motion ret. for 7/16/73 to 7/23/73.BONSAL,J.	
ul 16p73	Filed Deft.Marine Midland Bank-NYs Stip & Order adjourning deposition of Pltff until 2:00 P.M., 8/1/73.	
ul 17-73	Filed Memorandum of Deft.Marine Midland Bank-NY in opposition to Pltff's Motion for leave to amend the complaint.	
l 16-73	Filed Defts Walston &Co.Inc. and James Nissan's ANSWER.	
ul 20-73	Filed Pltff and the Class'Reply Affirmation in support of Cross Motion for Leave to serve an Amended Complaint.	
l 19-73	Filed Memorandum in opposition to "Marine Midland"Motion to dismiss or for a more definite statement.	
ul 19-73	Filed Pltff's Notice of Deposition upon oral examination ret.8/1/73,11:00 A.M. of Deft.James Nissan,in Room 601.	
ul 19-73	Filed Pltff's Notice of Deposition of Deft. Walston and Co.Inc. ret.7/1/73,10:00 A.M.,Room 601.	
ul 19-73	Filed Pltff's Notice of Deposition of Deft.Marine Midland Bank-NY,ret.Room 601, 2:00 P.M. on 8/2/73.	
ul 19-73	Filed Pltff's Notice of Deposition upon oral examination of Deft.3 I Co.Information Interscience,Inc.Ret.Rm 601,2:00 p.m. on 7/31/73.	
l 31-73	Filed Deft.Joel Brownstein's Notice of Motion to Dismiss ret.9/10/73,9:30 A.M.	
Jul 31-73	Filed Memorandum in support of Motion of Joel Brownstein to Dismiss Complaint.	
ug.2-73	Filed Memo End. on Notice of Motion dated 7/3/73. Motion to dismiss complaint is granted with leave to pltff to served and file an amended complaint on or before 8/15/73.Defts have until 9/5/73 to answer or move with respect to the Amended Complaint.SO ORDERED.BONSAL,J. (mn)	
g. 2-73	Filed Memo End.on Cross-Motion,dtd 7/11/73.Motion to serve and file an amended Complaint is granted.The Amended Complaint will be served and filed on or before 8/15/73.Defts to have until 9/5/73 with respect to Amended Complaint. So Ordered.BONSAL, J.(mn)	
g.6-73	Filed Affdvt of service by Frank Addis upon Joel Brownstein(sued as Joel "Doe" on 7/10/73.	

Docket Entries

CIVIL DOCKET — CLASS ACTION — Page -2- — JUDGE BONSAL

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMO REPOR EMOLU RETU
Aug.14-73	Filed Amended Complaint by Pltff. Pltff demands trial by Jury.			
Aug.14-73	Filed Pltff & the Class's Notice of production of documents for discovery & inspection, of Marine Midland Bank-NY.			
Aug.14-73	Filed Pltff & the Class's Notice of Production of Documents for discovery and inspection of 3 I Co. Information Interscience, Inc.			
Aug.14-73	Filed Pltff & the Class's Notice of production of documents for discovery and inspection of Walston & Co. Inc.			
Aug.14-73	Filed Pltff & the Class Notice of Deposition upon oral examination of deft James Nissan.			
Aug.14-73	Filed Pltff & the Class Notice of Deposition upon oral examination of deft Joel Brownstein.			
Aug.14-73	Filed Pltff&the Class's Notice of Deposition upon written questions of deft. 3 I Co./Information Interscience, Inc.			
Aug.28-73	Filed Stip & Order extending time for defts Walston & Co. Inc. and James Nissan to answer amended complaint to 9/10/73. BONSAL, J.			
Aug.29-73	Filed Amended Summons with Marshal's Returns. Served: Main Lorent&Co personally on 8/17/73(left service with 2 women who refused to give their names, or title. Excerpta Medica Foundation with S. Gray, Secy on 8/17/73 Medische Referatan by S. Cay, Secy auth to accept on 8/17/73 Stichting Excerpta Medica by S. Gray, Secy auth to accept on 8/17/73			
Sep5-73	Filed ANSWER of deft Joel Brownstein to the amended complaint.			
Sep5-73	Filed ANSWER of deft Marine Midland Bank, N.Y. to the amended complaint.			
Sep5-73	Filed deft Marine Midland's notice of motion re: compelling pltff to answer notice for deposition ret: 9-17-73.			
Sep5-73	Filed memorandum in support of motion of deft Marine Midland Bank compelling the pltff to appear for deposition.			
Sep5-73	Filed Stip & Order that the time for defts Medische Referatan & Stichting Excerpta Medica to answer the amended complaint is ext. to 9-28-73. Bonsal,J.			
Sep5-73	Filed deft 3i Co's response to notice to produce documents of pltff.			
Sep5-73	Filed ANSWER of deft 3i Co to the amended complaint.			LWC
Sep 10-73	Filed Stip & Order withdrawing motion to dismiss complaint against Joel Brownstein returnable on 9/20/73. BONSAL, J.			
Sep 12-73	Filed Pltff(Pro Se)Cross Motion & Affdvt for an order setting a date and time for deft Marine Midland Bank-NY to produce all documents specified in pltff's said notice&setting a date&time for deposition by oral expn of deft Joel Brownstein, etc. as indicated ret. 9/17/73, 9:30 A.M.			
Sep 12-73	Filed Memorandum in support of Cross Motion of Pltff.			

JUDGE BONSAL

CLASS ACTION **Docket Entries**

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
Sep 12-73	Filed Pltff(Pro Se) Reply to Motion .			
Sep 12-73	Filed Pltff(Pro Se)Affdvt&Notice of Motion determining action be maintained as class action ,etc as indicated10/15/73,9:30 A.M.			
Sep 12-73	Filed Pltff's Memorandum in support of Motion for Class Action.			
Sep 12-73	Filed Letter dated 9/10/73 from Robert R.Felton,Atty to Sullivan&Cromwell,Attn : Mr.William Willis re:Joel Brownstein bring along all requested records.			
Sep 10-73	Filed Stip & Order extending time for deft Main Lafrentz&Co to answer amended complaint to 9/27/73.BONSAL,J.			
Sep 11-73	Filed ANSWER of Defts Walston&Co.Inc.and James Nissan.			BA&M
Sep 12-73	Filed Response of Deft.Marine Midland Bank-NY to Request for production of documents.			
Sep 12-73	Filed Response of Deft.Joel Brownstein to request for production of documents.			
Sep 13-73	Filed Certificate of Mailing on 9/12/73 to: #30913-Peter A.Warren--Recd 9/12/73 Sargasso House Smith Parish,Bermuda #30914-Fred Von Eugen -Rec'd Sept.16-73 Casa Orlanda Via Das del Frate Iosone,tessin,Switzerland			
Sep 13-73	Filed Deft.Stichting Excerpta Medica(Excerpta Medica Foundation's)ANSWER to Complaint.SGC&			
Sep 14-73	Filed Deft. Walston & Co.Inc.to request for Production of Documents			
Sep 14-73	Filed Response of James Nissan to Request for Production of Documents.			
Sep 19-73	Filed Pltff's Notice of Cross Motion compelling deft: Marine Midland Bank-NY and Joel Brownstein to produce all documents specified in pltff's said notices & Affdvt.			
Sep 19-73	Filed Memorandum in support of Cross-motion of pltff.			
Sep 17-73	Filed Defts Marine Midland Bank-NY and Joel Brownstein Stip & Order adjourning deposition to 9:30 A.M. ,9/28/73. SO Ord.			
Sep 17-73	Filed Stip & Order extending time to answer,etc. to 10/3/73. BONSAL,J.			
Sep 20-73	Filed Memorandum of Defts Marine Midland Bank-NY and Joel Brownstein(i)in opposition to Pltff's Cross Motions and (ii)in reply to Pltff's Memorandum in opposition to Motion of Deft.Marine Midland Bank-New York			
Sep25-73	Filed Memo End.on Notice of Motion dtd 9/5/73.Motion granted after argument.Deposition to be held 10/9/73,10:00 A.M.All counsel to be invited to attend.SETTLE ORDER ON NOTICE.BONSAL,J.(mn)			
Sep 25-73	Filed Memo End.on Cross Motion dtd 9/12/73. Motion denied after argument without prejudice to pltff making new motion following deposition of Brownstein,specifying documents sought which have not been available. So Ordered.BONSAL,J.(mn)			
p25-73	Filed Further Cross-Motion compelling Defts.Marine Midland Bank-NY&Joel Brownstein to produce documents as indicated.			

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED / EMOLUMEN RETURNS
Sep 25-73	Filed Memo End.on Further Cross-Motion of same date.Motion denied after argument without prejudice to renewal following of Brownstein deposition.SO ORDERED.BONSAL,J.(MN)	
Sep 27-73	Filed Defts Medische Referatan (Excerpta Medica)N.V.,Infonet (Excerpta Medica -Rescona)N.V.and Eltrac(Infonet)N.V. Affdvts&Notice of Motion dismissing complaint ret. 10/15/73,9:30 A.M.,Room 1506.	
Sep 27=73	Filed Defts(same as ind.above)Memorandum of Law.	
Sep 27-73	Filed ORDER.Pltff appear for deposition upon oral examination by Deft.Marine Midland Bank-New York on 10/9/73,10:00 A.M., Room 1306 etc.as indicated.Ordered that at 10:00 A.M., 10/16/73 deft Marine Midland Bank-New York will produce for inspection&copying by pltff,documents specified. BONSAL,J.(mn)	
Sep 28=73	Filed Deft.3i Co Infomation,etc. s ANSWER	LW&M
Sep 24-73	Filed ANSWER of Deft Main Lafrentz & Co	KSFH&H
Oct.10-73	Filed Defts.Marine Midland Bank-NY and Joel Brownstein's Notice of Motion adjourning return date of pltff's motion that action be maintained as class action to 11/12/73, etc.as indicated.	
Oct.16-73	Filed stip & order that pltff's motion for class determination, be adj. from 1-15-73 to 11-19-73. Bonsal,J.	
Oct.25-73	Filed pltff's preliminary statement in opposition to deft's, motion to dismiss.	
Oct.25-73	Filed affidavit of R.R.Felton in opposition to motion to dismiss.	
Oct.15-73	Filed additional amended summons with marshals return. Served: Eltrac(Infonet N.V. by R.Feltan on 9-12-73 Gerald L. Brodsky " " " " 9-26-73. Infonet(Exerpta Medica-R Escona N.V. by R.Feltan " 9-12-73. Irving H. Sher by R. Feltan "10-1-73. Marvin Riesenbach by R. Feltan " 9-14-73. Arthur W. Elias " " " " 9-12-73.	
Nov.5-73	Filed pltff's affidavit & notice of motion to amend complaint, ret.11-12-73.	
Nov.5-73	Filed pltff's memorandum of law in support of his motion ret, 11-12-73.	
Nov.5-73	Filed deft's(Main Lafrentz & Co.) affidavit & notice of motion, summary judgment ret.11-12-73.	

Cont'd on page #5

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
Nov.5-73	Filed deft's Main Lafrentz & Co. memorandum of law in support of his motion for summary judgment.	
Nov.5-73	Filed pltff's notice to take deposition of deft. M.Lafrentz . (Filed on 10-25-73.)	
Nov.5-73	Filed pltff's notice to take deposition of deft. M.Lafrentz. (Filed on 10-25-73).	
Nov.5-73	Filed pltff's notice to take deposition of deft.M.Lafrentz.	
Nov.5-73	Filed pltff's notice to take deposition of deft. M.Lafrentz.	
Nov.7-73	Filed deft's Marine Midland Bank-N.Y. & Brownstein in opposition to pltff's motion to amend complaint.	
Nov.7-73	Filed affidavit of R.W.Foss in opposition to pltff's motion Re: amended complaint.	
Nov 2-73	Filed Defts Arthur W Elias&Marvin S.Riesenbach s Notice of Appearance by Atty	
Nov.9-73	Filed affidavit of M.Kunen in opposition to motion to amend.	
Nov.9-73	Filed deft''s (Main Lafrentz & Co. affidavit & notice of motion, for a protective order staying all discovery ret.11-19-73.	
Nov.9-73	Filed deft's memorandum of law in support of motion ret.11-19-73;	
Nov 9-73	Filed deft's notice of appearance.	
Nov.9-73	Filed pltff's affidavit & notice of motion to amend complaint, ret.11-19-73.	
Nov.9-73	Filed pltff's memorandum of law in support of his motion ret., 11-19-73.	
Nov.9-73	Filed affidavit of R.R.Felton in opposition to deft's motions for summary judgment.	
Nov.9-73	Filed pltff's memorandum of law in support of his motion to, amend complaint	
Nov.9-73	Filed addendum of R.R.Felton to opposition affidavit	
Nov.9-73	Filed reply affidavit of R.R. Felton to deft's Main Lafrentz, opposition to pltff's motion to amend complaint.	
Nov 14-73	Filed memorandum of deft. Main Lafrentz & Co. in opposition to pltff's motion .	
Nov.15-73	Filed deft's Riesenbach,Elias & Sher memorandum in opposition, to motion for class action.	
Nov.15-73	Filed affidavit of R.G.Lyon in respondee to pltff's motion.	
Nov.15-73	Filed deft's Marine Midland Bank-New York & Joel Brownstein in opposition to pltff's motion for class action.	

Cont'd on page #6

... 2200 ROBERT R. ...

Docket Entries

CIVIL DOCKET

Bonsal J.

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
Nov.16-73	Filed affidavit of R.W.Lyon Re: deposition of pltff.			
Nov.16-73	Filed deft's Walston & Co. & James Nissan in opposition to, motion for class action.			
Nov 15-73	Filed supplementary affdvt of Robert R. Felton by pltffs.			
Nov.29-73	Filed amended complaint .			
Dec. 4-73	Filed Memo-endorsed on pltff's amended complaint filed 11-29-73. Leave to file the amended Complaint is granted., So ordered. Bonsal,J.			
Dec.13-73	Filed deft's(Main Lafrentz & Co.) affidavit & notice of motion, ret. 12-31-73. to dismiss complaint			
Dec.13-73	Filed deft's memorandum of law in support of motion ret.12-31-73.			
Dec.14-73	Filed certain deft's affidavit & notice of motion to dismiss, latest amended complaint ret.12-31-73.			
Dec/18-73	Filed deft's 3i CO. Information Interscience Inc. notice of , motion to dismiss amended complaint as to them ret.12-31-73.			
Dec.18-73	Filed deft's memorandum in support of motion to dismiss complaint, ret.12-31-73.			
Dec.18-73	Filed affidavit of service by Frank Addis.			
Jan. 4-74	Filed pltff's memorandum in opposition to deft's motions to , dismiss pltff's amended complaint.			
Jan.4-74	Filed pltff's exhibits A to F annexed to reply memorandum.			
Jan.4-74	Filed deft's (Walston & Co. & J.Nissan will take deposition, of pltff. (Filed on 12-17-73.)			
Jan.4-74	Filed ANSWER of deft's Walston & Nissan to second amended, complaint. (Filed 12-17-73)			BA&M
Jan.28-74	Filed deposition of J.S.Brownstein taken on 10-16-73. m/n			
Jan.29 74	Filed deposition of pltff. taken on 10-9-73. m/n			
Jan.29-74	Filed Continued deposition of Robert Felton taken on 10-11-73. m/n			
Mar.29-74	Filed MEMORANDUM DECISION #40529: Deft's motions to dismiss the, amended complaint are granted, without leave to amend. , So ordered. Bonsal,J. m/n .			
Apr. 3-74	Filed JUDGMENT: Ordered that deft's Walston & Co., etal have, judgment against the pltff's dismissing the amended , complaint. Judgment Ent. Clerk. m/n Ent.4-3-74.			
Apr.3-74	Filed deposition of pltff taken on 10/9/73.(mn)			
Apr.3-74	Filed Cont'd." " " " " 10/11/73.(mn)			

D. C. 110

Cont'd on page #7

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT RECEIVED IN EMOLUMENT RETURNS
Apr.22-74	Filed Pltff's notice of appeal to the U.S.C.A. from order of Judge Bonsal dated 3-29-74. Mailed copies to Breed, Abbott & Morgan, Kaye Scholer Fierman Hays & Handler, Leon Weill & Mahony - Shea Gould Climenko & Kramer, & Sullivan & Cromwell, Anderson Russell & Kill.			
May.20-74	Filed Bill of Costs in favor of deft's Marine Midland-N.Y. & Joel Brownstein only in the sum of $1,760.19 & docketed as Judgment $74,436.			
May.29-74	Filed pltff's affidavit & notice of motion to vacate deft's bill of costs ret.6-10 74.			
May 29 74	Filed pltff's memorandum in support of motion ret.6-10 74.			
Jun. 6-74	Filed deft's Marine Midland Bank & Joel Brownstein in opposition to vacate bill of costs.			
Jun.7-74	Filed reply affidavit of R.R. Felton in deft's opposition to this instant motion.			
Jun.3-74	Filed notice that record on appeal has been certified & transmitted to the U.S.C.A. on this 3rd. day of June.			
Jun.20-74	Filed stip & order that pltff's motion to vacate deft's Brownstein & Marine Midland Bank N.Y. bill of costs & judgment are hereby adj. pending pltff's appeal of Judge Bonsal's order of 3-29-74. Pltff's time to appeal said deft's judgment for these costs is ext. accordingly. So ordered. Bonsal, J.			
Jul.2-74	Filed affidavit of Robert R. Felton in reply to Marine Midland's opposition to motion to amend complaint. (Verified on Nov. 11-1973)			
Jul.2-74	Filed pltff's memorandum in reply to deft's opposition to motion for class action.			
Jul.15-74	Filed transcript of record of proceedings dated 1-7-74.			

CLASS ACTION COMPLAINT (Filed May 17, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON

Plaintiff

- against -

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANK-NEW YORK, JOEL "DOE", Last Name Being Unknown and Fictitious and 3 I CO./INFORMATION INTERSCIENCE,INC.

Defendants

----------x

CLASS ACTION COMPLAINT

PLAINTIFF'S DEMAND TRIAL BY JURY

Plaintiff, on behalf of himself and all other purchasers of securities of defendant 3 I Co./Information Interscience, Inc. from defendant Walston and Co., Inc. and/or through the fiduciary department of defendant Marine Midland Bank-New York, for his complaint, upon information and belief, complaining of the defendants herein, alleges:

JURISDICTION AND VENUE

1. The action is commenced under The Exchange Act; The Securities Act of 1933; the rules and regulations of the Securities and Exchange Commission promulgated thereunder; The General Business Law of New York and common law principles. Jurisdiction is based on The Securities Act of 1933, 15 U.S.C. Section 77a and The Securities Exchange Act of 1934, 15 U.S.C. Section 78aa, as amended and pendent jurisdiction.

2. The acts and transactions complained of herein occurred

in substantial part within the Southern District of New York. Defendant Walston and Co., Inc. maintains brokerage offices within the Southern District. Defendant James Nissan is employed by defendant Walston and Co., Inc. at its office at 77 Water Street, New York, New York. Defendant Marine Midland Bank-New York maintains branches throughout the City of New York. Numerous of the alleged transactions occurred in the Southern District and offerings of securities involved herein have been made to plaintiff and the class within and from said Southern District, and defendant 3 I Co./Information Interscience, Inc.'s (hereinafter referred to as "3 I") securities were traded "over the counter" and were sold by defendant Walston and Co., Inc. to plaintiff and the class in New York.

3. The matter in controversy exceeds the sum of $10,000.00, exclusive of interests and costs. This action is not instituted to confer jurisdiction on this Court which it would not otherwise have.

4. Defendants carried out the acts and practices hereinafter set forth by the use, means and instrumentalities of interstate commerce and the mails.

CLASS ACTION

5. Plaintiff brings this action individually and as a class action pursuant to Rule 23(b) of the Federal Rules of Civil

Procedure on behalf of a Class, consisting of persons and business organizations who purchased securities of defendant 3 I from defendant Walston and Co., Inc. and/or through the fiduciary department of defendant Marine Midland Bank-New York and were damaged by the acts hereinafter detailed.

6. Plaintiff estimates that the Class is in excess of 4,000 members; and that joinder of all members is impractical.

7. Plaintiff is a knowledgeable person and will insure adequate representation of the interests of all purchasers and holders of securities of defendant 3 I. His interests are coincident with the interests of all members of the Class and he will farily and adequately protect the interests of all absent members of the Class. He has no interests which are adverse to any members of the Class.

8. A Class Action is superior to any other method available for fair and efficient adjudication of the controversy. It would be impossible to manage all possible actions or attempt to intervene into this action all damaged class members. Plaintiff knows of no difficulties likely to be encountered in management of this Class action.

9. Prosecution of separate actions by individual class members would create risk of inconsistent or varying adjudications with respect to various class members.

10. There are common questions of law and fact common to the class.

11. The questions of law and fact common to the members of the class predominate over any questions affecting individual members.

THE PARTIES

12. Plaintiff has been both a holder and a seller of defendant 3 I common stock purchased and sold by and through the defendant Walston and Co., Inc. and is a holder of 2,000 shares of defendant 3 I purchased from defendant Walston and Co., Inc.

13. Defendant James Nissan (hereinafter referred to as "Nissan") at all times hereinafter mentioned was and still is a registered representative licensed to purchase and sell securities upon the exchanges and over the counter and was and still is an employee and/or officer of defendant Walston and Co., Inc.

14. Defendant Walston and Co., Inc. (hereinafter referred to as "Walston") at all times hereinafter mentioned was and still is a foreign corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, and authorized to transact business in the State of New York, with its principal place of business in the City, County and State of New York, and is licensed and engaged as brokers and dealers in securities on the major exchanges and over the counter.

15. Defendant Walston at all times hereinafter mentioned "made a market" and kept an inventory of the securities of defendant 3 I.

16. Defendant Walston at all times hereinafter mentioned was either in a "long" or "short" position of the securities of defendant 3 I and at the same time purchased and/or sold these securities to the plaintiff and certain members of the class.

17. Defendant 3 I Co./Information Interscience, Inc. (hereinafter referred to as "3 I Co.") was and still is a foreign corporation, duly organized and existing under and by virtue of the laws of the State of Pennsylvania with its principal place of business presently located in Houston, Texas.

18. Defendant Marine Midland Bank-New York (hereinafter referred to as "Marine Midland") at all times hereinafter mentioned was and still is a bank duly organized and existing under the laws of New York State.

19. Defendant Joel "Doe", last name being unknown and fictitious, (hereinafter referred to as "Doe") at all times hereinafter mentioned was an employee of defendant Marine Midland, in its research and/or fiduciary department.

20. The plaintiff and certain members of the class were customers within the definition of the General Rules and Regulations under the Securities Exchange Act of 1934 and entrusted moneys and property to the defendants Walston, Nissan and Marine Midland for the purpose of purchasing and selling securities of defendant 3 I.

COUNT I

21. That commencing on or about September 30, 1970 and in violation of the rules and regulations of the Securities Exchange Act of 1934, the rules and regulations of the Securities and Exchange Commission promulgated thereunder, the General Business Law of New York and common law principles, the defendants Walston, Nissan and Doe employed manipulative and deceptive devices by creating actual and apparent active trading in defendant 3 I to raise its price for the purpose of inducing the purchase of such securities by plaintiff and the class and made false and misleading statements of material facts and omitted to state material facts which were necessary to be made in order to make such statements not misleading, issued inflated reports, untrue statements and incorrect financial statements and evaluation of 3 I's past and present financial condition and business operations and its future earnings and prospects, thereby causing a substantial artificial short-term increase in the market price of 3 I, by failing to disclose to plaintiff and the class of the existence of a close relationship between defendants Walston, Nissan, Doe, 3 I's management and its major stockholder; in defendants Walston and Marine Midland failing to exercise reasonable supervision over defendants Nissan and Doe respectively to prevent the aforesaid; in addition, defendants Walston and Nissan by making a market in the securities of defendant 3 I, in keeping an inventory in said securities, in being

in either a "long" or "short" position of said securities were in conflict of interest and in a collusive position as to the purchases and sales of said securities for the account of plaintiff and the class and despite this conflict of interest defendant Nissan recommended to plaintiff and the class the continuous purchase of said stock.

22. As the result of the aforesaid the common stock of defendant 3 I was caused to trade in 1971 in excess of twenty-four ($24.00) dollars per share and whereas said common stock was worthless and at present it is quoted at less than fifty ($.50) cents per share.

23. Plaintiff and the class sustained substantial financial losses as the result of the foregoing, which losses cannot now be accurately determined.

COUNT II

24. Plaintiff and the class repeats, reiterates and realleges each and every allegation contained in paragraph "1" through "23" inclusive with the same force and effect as if set forth at length herein.

25. The relationship between the plaintiff and the class and defendants Walston, Nissan, Marine Midland and Doe was one of confidence and trust, but notwithstanding the relationship of confidence and trust, and in breach of their fiduciary duty owed to

the plaintiff and the class, the defendants Walston, Nissan, Marine Midland and Doe did not act in the best interests of the plaintiff and the class in that they employed manipulative and deceptive devices by creating actual and apparent active trading in 3 I to raise its price for the purpose of inducing the purchase of such securities by plaintiff and the class and they made false and misleading statements of material facts and omitted to state material facts which were necessary to be made in order to make such statements not misleading, issued inflated reports, untrue statements, and incorrect financial statements and evaluations of 3 I's past and present financial conditions and business operations and its future earnings and prospects, thereby causing a substantial artificial short-term increase in the market price of 3 I and said defendants failed to disclose to plaintiff and the class of the existence of a close relationship between defendants Walston, Nissan, Marine Midland, Doe, and 3 I's management and its major stockholder; and in defendants Walston and Marine Midland failing to exercise reasonable supervision over defendants Nissan and Doe repsectively to prevent the aforesaid.

26. Plaintiff and the class sustained substantial financial losses as the result of the foregoing, which losses cannot now be accurately determined.

JUDGMENT

WHEREFORE, plaintiff and the class demands judgment against defendants, as follows:

(a) that this action be declared as maintained as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure;

(b) that defendants be adjudged jointly and severally liable to plaintiff and the plaintiff class for compensatory damages and, in addition, punitive damages;

(c) that plaintiff be awarded costs and reasonable counsel's fees,

together with such other and further relief as to this Court shall appear just and equitable.

ROBERT R. FELTON
Attorney for the Class
42 Third Avenue
Mineola, New York 11501
516-746-5711

NOTICE OF MOTION TO DISMISS DATED JUNE 28, 1973

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- -x

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., JAMES NISSAN.
MARINE MIDLAND BANK - NEW YORK,
JOEL "DOE", Last Name Being Unknown
and Fictitious and 3 I Co./
INFORMATION INTERSCIENCE, INC.,

JUDGE
BONSAL

Defendants.

- -x

S I R S :

PLEASE TAKE NOTICE, that on the annexed complaint, and upon all the papers and proceedings heretofore had herein, the undersigned will move before Hon. Dudley B. Bonsal, United States District Judge, in the United States Courthouse, Room 519, at Foley Square, New York, New York, on July 16, 1973, at 9:30 o'clock in the forenoon for an order pursuant to F.R. Civ. P. 12 (b) dismissing the complaint as to defendant 3 I Co./INFORMATION INTERSCIENCE, INC., for failure to state a claim upon

Notice of Motion to Dismiss Dated June 28, 1973

which relief can be granted and for improper venue and awarding such other further and different relief as to the Court may seem just and proper.

Dated: New York, New York
June 28, 1973

Yours, etc.,

s/ James Weill, a partner of
LEON, WEILL & MAHONY
Attorneys for Defendant
3 I Co./INFORMATION INTER-SCIENCE, INC.
Office & P. O. Address
261 Madison Avenue
New York, New York 10016
(212) MU7-5707

TO:

ROBERT R. FELTON
Attorney for Plaintiff
Office & P. O. Address
42 Third Avenue
Mineola, New York 11501

NOTICE OF DEPOSITION OF ROBERT FELTON (Filed July 5, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

- against -

WALSTON AND CO., INC., et al.,

Defendants:

No. 73 Civ.-2200 DBB

NOTICE OF DEPOSITION UPON ORAL EXAMINATION

S I R S :

PLEASE TAKE NOTICE that defendant Marine Midland Bank-New York, pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure, will take the deposition upon oral examination of plaintiff Robert R. Felton, before an officer authorized to administer oaths by the laws of the State of New York, at the offices of Messrs. Sullivan & Cromwell, Room 1306, 48 Wall Street, New York, New York 10005 at 10 a.m. on July 13, 1973. The examination will continue from day to day until completed. You are invited to attend and cross examine.

PLEASE TAKE FURTHER NOTICE that the plaintiff, pursuant to Rules 30(b)(5) and 34 of the Federal Rules of Civil Procedure, will be required to produce upon the deposition all documents described in the attached Schedule to this Notice for inspection and copying.

Dated: July 3, 1973

Yours, etc.

SULLIVAN & CROMWELL
By William E. Willis
Attorneys for Defendant Marine Midland Bank-New York
48 Wall Street
New York, New York 10005 212-422-8100

STIPULATION ADJOURNING DEPOSITION (Filed July 16, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON

Plaintiff

- against -

WALSTON AND CO., INC., et al.

Defendants

----------x

73 Civ. 2200-DBB

STIPULATION

IT IS HEREBY STIPULATED AND AGREED that the deposition of plaintiff, pursuant to Notice, dated July 3, 1973, be and the same hereby is adjourned until 2:00 P.M. on August 1, 1973 at the office of the Clerk, United States District Court, Room 601, United States Courthouse, Folely Square, New York, New York; and it is further

STIPULATED AND AGREED that plaintiff will not have any depositions or other discovery pursuant to Rules 26-37 returnable until after the completion of the above deposition.

Dated: New York, New York
July 10, 1973

ROBERT R. FELTON
(Robert R. Felton)
42 Third Avenue
Mineola, New York 11501

SULLIVAN & CROMWELL
By William Willis
(A member of the Firm)
48 Wall Street
New York, New York 10005
Attorneys for Marine Midland Bank-New York

Stipulation Adjoirning Deposition

CREED, ABBOT & MORGAN

By Thomas W Kelly
(A Member of the Firm)
One Chase Manhattan Plaza
New York, New York 10005.
Attorneys for Defendant
Walston & Co., Inc. and
James Nissan

LEON, WEILL & MAHONEY

By
(A Member of the Firm)
261 Madison Avenue,
New York, New York 10016
Attorneys for Defendant 3i
Company - Information
Intersciences, Inc.

SO ORDERED:

July , 1973

John B. Bad

U.S.D.J.

CROSS-MOTION FOR ORDER AMENDING COMPLAINT (Filed July 11, 1973) 23a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON

Plaintiff

CIVIL ACTION FILE
No. 73 CIV. 2200

- against -

JUDGE BONSAL

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANK - NEW YORK, JOEL "DOE", Last Name Being Unknown and Fictitious and 3 I CO./INFORMATION INTERSCIENCE, INC.

CROSS MOTION

Defendants

----------x

S I R S :

PLEASE TAKE NOTICE, that on the affidavit of Robert R. Felton, duly verified the 6th day of July, 1973 and the annexed proposed amended Complaint and upon all the papers and proceedings heretofore had herein, the undersigned will move before Hon. Dudley B. Bonsal, United States District Judge, in the United States Courthouse, Room 519, at Foley Square, New York, New York, on July 30, 1973, at 9:30 o'clock in the forenoon for an order amending the Complaint herein and permitting the service of the proposed amended Complaint on the defendants herein and awarding such other further and different relief as to the Court may seem just and proper.

Dated: New York, New York
July 6, 1973

Yours, etc.,

ROBERT R. FELTON
Attorney for the Class
Office and P.O. Address
42 Third Avenue
Mineola, New York 11501
(516) 746-5711

AFFIRMATION IN BEHALF OF 3I CO. IN OPPOSITION TO CROSS-MOTION (Filed July 16, 1973)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON, Plaintiff, -against- WALSTON AND CO., INC., et al., Defendants.	73 Civ. 2200-DBB AFFIRMATION IN OPPOSITION TO MOTION FOR LEAVE TO SERVE AN AMENDED COMPLAINT

STATE OF NEW YORK, COUNTY OF NEW YORK

THE UNDERSIGNED, attorney at law of the State of New York, affirms on the penalty of perjury that he is a member of the firm of Leon, Weill & Mahony, attorneys for the moving defendant 3 I Co./Information Interscience, Inc. and has had full charge of this matter since its inception.

This affirmation is submitted in opposition to plaintiff's cross motion for leave to amend the original complaint served and filed herein.

Plaintiff apparently concedes that the original complaint to which defendant's motion was addressed failed to state a claim upon which relief could be granted against it.

He now cross-moves for leave to serve an amended complaint in which he has added a third count which with respect to the moving defendant alleges in part:

> "The defendants Walston, Missan and Doe and the officers and management of 3 I in concert employed manipulative and deceptive devices ***."

The quoted statement which is the only reference in the added count in the Complaint to the moving defendant, adds

nothing to the original complaint. At most, it attempts to implicate the "officers and management of 3 I", none of whom are parties to this action.

In addition, the proposed amended complaint is demurrable and insufficient to state a claim upon which relief may be granted in that it fails specifically to allege the facts essential to the type of cause of action it seeks to sustain. Rule 9(b) of the Federal Rules of Civil Procedure. With respect to this aspect of plaintiff's application for leave to serve the proposed amended complaint, the undersigned respectfully refers to the memorandum of law submitted in support of the application made by the defendant Marine Midland Bank - New York, to dismiss the complaint on such grounds and begs leave to incorporate such memorandum herein.

Dated: July 13, 1973
New York, New York

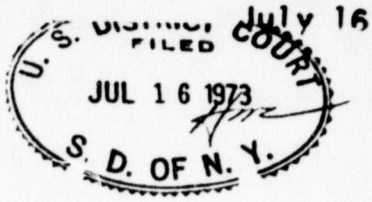
Julius Winn

NOTICE OF MOTION BY MARINE MIDLAND TO DISMISS OR FOR MORE DEFINITE STATEMENT (Filed July 16, 1973)

MEMO. ENDORSED

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK



ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

73 Civ. 2200-DBB

NOTICE OF MOTION TO DISMISS OR FOR MORE DEFINITE STATEMENT

S I R :

PLEASE TAKE NOTICE that the undersigned defendant will move this Court on July 23, 1973, before Honorable Dudley B. Bonsal, in Room 1105, United States Courthouse, Foley Square, New York, New York, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order:

(a) pursuant to Rules 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the complaint herein; or in the alternative,

(b) pursuant to Rule 12(e) of the Federal Rules of Civil Procedure, directing the filing of a more definite statement,

by reason of the failure of the plaintiff to comply with the provisions of Rule 9(b) of the Federal Rules of Civil Procedure, and for such other and further relief as to the Court may seem just and proper.

The grounds of said motion are set forth in

Notice of Motion by Marine Midland to Dismiss or for more Definite Statement

the memorandum in Support of Motion to Dismiss, served herewith.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 9(c)(2) of the General Rules of this Court, all papers in opposition to this motion must be served at least 3 days prior to the return date hereof.

Dated: New York, New York
July 13, 1973

Yours, etc.

SULLIVAN & CROMWELL

By William E. Willis
(A Member of the Firm)
Attorneys for Defendant Marine Midland Bank-New York,
48 Wall Street,
New York, New York 10005
(212) 422-8100

TO: ROBERT R. FELTON, ESQ.
Attorney Pro Se
42 Third Avenue
Mineola, New York 11501

MESSRS. BREED, ABBOTT & MORGAN
Attorneys for Defendants
Walston & Co., Inc. and
James Nissan
One Chase Manhattan Plaza
New York, New York 10005

MESSRS. LEON, WEILL & MAHONEY
Attorneys for Defendant 3 I Co./
Information Interscience, Inc.
261 Madison Avenue
New York, New York 10016

NOTICE BY PLAINTIFF TO TAKE DEPOSITION OF JAMES NISSIN (Filed July 19, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON

Plaintiff

- against -

WALSTON AND CO., INC., et al.

Defendants

No. 73 Civ. 2200 DBB

NOTICE OF DEPOSITION UPON ORAL EXAMINATION

S I R S :

PLEASE TAKE NOTICE that plaintiff, pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure, will take the deposition upon oral examination of defendant James Nissan before an officer authorized to administer oaths by the laws of the State of New York, at the office of the Clerk, United States District Court, Room 601, United States Courthouse, Foley Square, New York, New York at 11 a.m. on August 1, 1973. The examination will continue from day to day until completed. You are invited to attend and cross-examine.

PLEASE TAKE FURTHER NOTICE that the defendant pursuant to Rules 30(b) (5) and 34 of the Federal Rules of Civil Procdure will be required to produce upon the deposition all documents described in the attached Schedule to this Notice for inspection and copying.

Dated: July 18, 1973

Yours, etc.,

ROBERT R. FELTON
Attorney for the Class
42 Third Avenue
Mineola, New York 11501
516-746-5711

NOTICE OF PLAINTIFF TO TAKE DEPOSITION OF WALSTON AND CO.

UNITED STATES DISTRICT COURT (Filed July 19, 1973)
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON

Plaintiff

- against -

WALSTON AND CO., INC., et al.

Defendants

----------x

No. 73 Civ. 2200 DBB

NOTICE OF DEPOSITION UPON ORAL EXAMINATION

S I R S :

PLEASE TAKE NOTICE that plaintiff, pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure, will take the deposition upon oral examination of defendant Walston and Co., Inc. before an officer authorized to administer oaths by the laws of the State of New York, at the office of the Clerk, United States District Court, Room 601, United States Courthouse, Foley Square, New York, New York at 10 a.m. on August 1, 1973. The examination will continue from day to day until completed. You are invited to attend and cross-examine.

PLEASE TAKE FURTHER NOTICE that the defendant, pursuant to Rules 30(b) (5) and 34 of the Federal Rules of Civil Procedure, will be required to produce upon the deposition all documents described in the attached Schedule to this Notice for inspection and copying.

Dated: July 18, 1973

Yours, etc.
Robert R. Felton
ROBERT R. FELTON

Attorney for the Class
42 Third Avenue
Mineola, New York 11501
(516) 746-5711

REPLY AFFIRMATION OF ROBERT FELTON IN SUPPORT OF CROSS-MOTION (Filed July 20, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON

Plaintiff

- against -

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANK-NEW YORK, JOEL "DOE", Last Name Being Unknown and Fictitious and 3 I CO./INFORMATION INTERSCIENCE, INC.

Defendants

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73 Civ. 2200-DBB

REPLY AFFIRMATION IN SUPPORT OF CROSS MOTION FOR LEAVE TO SERVE AN AMENDED COMPLAINT

STATE OF NEW YORK)
SS.:
COUNTY OF NASSAU)

ROBERT R. FELTON, as an attorney at law of the State of New York, affirms under penalties of perjury the following:

This affirmation is usbmitted in reply to defendant's opposition to the plaintiff's cross motion to serve an Amended Complaint.

Jules Winn, Esq., counsel for defendant 3 I Co./ Information Interscience, Inc. in his opposition has quoted a portion of the Third Count of the proposed Amended Complaint wherein plaintiff alleges and states that:

> "The defendants Walston, Nissan and Doe and the officers and management of 3 I Co./Information Interscience, Inc. in concert employed manipulative and deceptive devices. . ."

After reciting the aforesaid, Mr. Winn then concedes that the proposed Amended Complaint "attempted to implicate the 'officers and management of 3 I Co.' none of whom are parties to this action".

In effect, Mr. Winn agrees that the proposed Amended Complaint contains a good cause of action against the officers and management of 3 I Co. but that the corporation defendant 3 I Co. is not responsible for the acts of its officers and management.

It is respectfully submitted that Mr. Winn is misinformed and the 3 I Co. is responsible for the acts of its officers and the management as alleged and stated in the proposed Amended Complaint.

> The law is quite settled that, a corporation can only act through its agents and officers. Mandel Bros., Inc. v. Federal Trade Commission 254 F.2d 18, reversed in part 79 CT. 818. Steel Co. Stainless Steel v. Federal Trade Commission 187 F.2d 693.
>
> The acts of an agent of a corporation are the acts of the corporation, and knowledge of the officers and agents is generally imputed to the corporation. Nelson Radio and Supply Co. v. Motorola, Inc. 200 F.2d 911. Knox v. First Sec. Bank of Utah, N.A. 206 F.2d 823. Tobman v. Cottage Woodcraft Shop 194 F. Supp. 83.
>
> A corporation is responsible for the acts of its employees and corporation officers. Singer Mfg. Co. v. Sun Vacuum Stores, Inc. 192 F. Supp. 739. J. Berkman Iron and Metal Co. v. Striano 111 F. Supp. 221.

WHEREFORE, it is prayed that the plaintiff be permitted to serve the aforesaid proposed Amended Complaint.

Dated: Mineola, New York
July 20, 1973

ROBERT R. FELTON

ROBERT R. FELTON
Attorney for the Class
42 Third Avenue
Mineola, New York 11501

NOTICE OF MOTION BY JOEL BROWNSTEIN TO DISMISS
(Filed July 31, 1973)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT FILED JUL 31 1973 S.D. OF N.Y.

ROBERT R. FELTON,

Plaintiff,

-v-

WALSTON AND CO., INC., et al.,

Defendants.

73 Civ. 2200-DBB

NOTICE OF MOTION TO DISMISS

S I R :

PLEASE TAKE NOTICE that the undersigned, counsel for Joel Brownstein, who has heretofore been served with a copy of the summons and complaint herein, will move this Court on September 10, 1973, before Honorable Dudley B. Bonsal, United States Courthouse, Foley Square, New York, New York, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order, pursuant to Rules 12(b)(4)(5) and (6) of the Federal Rules of Civil Procedure, dismissing the complaint herein, by reason of the failure of the said complaint to name Joel Brownstein as a party or allege any claim against him, and for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 9(c)(2) of the General Rules of this Court, all papers in opposition to this motion must be served at least 3 days prior to the return date hereof.

Dated: New York, New York
July 30, 1973

Yours, etc.

SULLIVAN & CROMWELL

By _____
(A Member of the Firm)
Attorneys for Joel Brownstein,
48 Wall Street,
New York, New York 10005
(212) 422-8100

TO:

ROBERT R. FELTON, ESQ.
Attorney Pro Se
42 Third Avenue
Mineola, New York 11501

MESSRS. BREED ABBOTT & MORGAN
Attorneys for Defendant
Walston & Co., Inc. and
James Nissan
One Chase Manhattan Plaza
New York, New York 10005

MESSRS. LEON, WEILL & MAHONY
Attorneys for Defendant
3i Company - Information
Intersciences, Inc.
261 Madison Avenue
New York, New York 10016

NOTICE BY PLAINTIFF TO TAKE DEPOSITION OF 3 I CO. (Filed August 14, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT R. FELTON

Plaintiff

- against -

WALSTON AND CO., INC., et al.

Defendants

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No. 73 Civ. 2200 DBB

NOTICE OF DEPOSITION UPON WRITTEN QUESTIONS

S I R S :

PLEASE TAKE NOTICE that plaintiff, pursuant to Rule 31 of the Federal Rules of Civil Procedure, will take the deposition upon written questions of defendant 3 I Co./Information Interscience, Inc., located at 9219 Katy Freeway, Houston, Texas before Mr. Clinton Gettig at 10th floor, Federal Building, 515 Rusk Street, Houston, Texas at 10 a.m. on August 20, 1973. The written questions, numbered 1 through 44 are annexed hereto.

Dated: August 10, 1973

Yours, etc.

ROBERT R. FELTON
Attorney for the Class
42 Third Avenue
Mineola, New York 11501
(516) 746-5711

TO: LEON, WEILL AND MAHONY, ESQS.
Attorneys for Defendant 3 I Co./
Information Interscience, Inc.
261 Madison Avenue
New York, New York 10016

BREED, ABBOTT AND MORGAN
Attorneys for Defendants
Walston and Co., Inc. and James Nissan
1 Chase Manhattan Plaza
New York, New York 10005

SULLIVAN AND CROMWELL
Attorneys for Defendants Marine Midland
Bank - New York and Joel Brownstein
48 Wall Street
New York, New York 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON

Plaintiff

- against -

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANK - NEW YORK, JOEL BROWNSTEIN, 3 I CO./INFORMATION INTERSCIENCE, INC., GERALD L. BRODSKY, MAURICE BRODSKY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, EXCERPTA MEDICA FOUNDATION, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), MEDISCHE REFERATAN (EXCERPTA MEDICA) N.V., INFONET (EXCERPTA MEDICA - RESCONA) N.V., ELTRAC (INFONET) N.V., PETER WARREN, MAIN LAFRENTZ AND CO., FRED VON EUGEN, S. KIM KESSLER and GERALDINE KESSLER

CLASS ACTION
AMENDED COMPLAINT

Plaintiffs Demand Trial By Jury

Defendants

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Plaintiff, on behalf of himself and all other purchasers of the securities of defendant 3 I Co./Information Interscience, Inc., for his Amended Complaint, upon information and belief, complaining of the defendants herein, alleges:

JURISDICTION AND VENUE

1. The action is commenced under and jurisdiction is based on The Securities Act of 1933, 15 U.S.C. Sections 77a-z, The Securities Exchange Act of 1934, 15 U.S.C. Sections 78a-h, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles.

2. The acts and transactions complained of herein occurred in substantial part within the Southern District of New York and offerings of securities involved herein have been made to

plaintiff and the class in the said Southern District. Defendant 3 I Co./Information Interscience, Inc. was and still is a publicly held business corporation with securities purchased and/or sold "over the counter" by brokerage concerns mainly within the Southern District of New York. Defendant Walston and Co., Inc. maintains brokerage offices within the Southern District and was a dealer and also acted as a broker in the securities of the said defendant 3 I Co./Information Interscience, Inc. Defendant James Nissan is employed as a registered representative by defendant Walston and Co., Inc. at its office at 77 Water Street, New York, New York. Defendant Marine Midland Bank - New York maintains bank branches throughout the City of New York.

3. The matter in controversy exceeds the sum of $10,000.00, exclusive of interests and costs. This action is not instituted to confer jurisdiction on this Court which it would not otherwise have.

4. Defendants carried out the acts and practices hereinafter set forth by the use, means and instrumentalities of interstate commerce and the mails.

CLASS ACTION

5. Plaintiff brings this action individually and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a Class, consisting of those persons and business organizations who purchased securities of defendant 3 I Co./Information Interscience, Inc. (hereinafter referred to as defendant "3 I Co.") and were damaged by the acts hereinafter alleged.

6. Plaintiff estimates that the Class is in excess of 8,000 members and that joinder of all members is impractical.

7. Plaintiff is a knowledgeable person and plaintiff will insure adequate representation of the interests of all purchasers and holders of securities of defendant 3 I Co. His interests are coincidental with the interests of all members of the Class and he will fairly and adequately protect the interests of all absent members of the Class. He has no interests which are adverse to any members of the Class.

8. A Class action is superior to any other method available for fair and efficient adjudication of the controversy. It would be impossible to manage all possible actions or attempt to intervene into this action all damaged class members. Plaintiff knows of no difficulty likely to be encountered in management of this Class action.

9. Prosecution of separate actions by individual class members would create risk of inconsistent or varying adjudications with respect to various class members.

10. There are common questions of fact and law common to the Class.

11. The questions of law and fact common to the members of the Class predominate over any questions affecting individual members.

THE PARTIES AND THEIR ACTS

12. Plaintiff has been both a purchaser and a seller of Common Stock, Class A, par value $ .10 per share, issued by

defendant 3 I Co. and is at present a holder of 2,000 shares.

13. Defendant James Nissan (hereinafter referred to as "Nissan") at all times herein mentioned was and still is a registered representative licensed to purchase and sell securities upon the exchanges and over the counter and was and still is an employee and/or officer of defendant Walston and Co., Inc.

14. Defendant Walston and Co., Inc. (hereinafter referred to as "Walston") at all times herein mentioned was and still is a foreign corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, and authorized to transact business in the State of New York, with its principal place of business in the City, County and State of New York, and is licensed and engaged as brokers and dealers in securities on the major exchanges and over the counter.

15. Defendant Walston at all time herein mentioned "made a market" and kept an inventory of the securities of defendant 3 I Co.

16. Defendant Walston at all times herein mentioned was either in a "long" or "short" position of the securities of defendant 3 I Co. and at the same time purchased and/or sold these securities to the plaintiff and certain members of the class.

17. Defendant 3 I Co./Information Interscience, Inc. (hereinafter referred to as "3 I Co.") was and still is a foreign corporation, duly organized and existing under and by virtue of the laws of the State of Pennsylvania with its principal place of business presently located in Houston, Texas.

18. Defendant 3 I Co. at all times herein mentioned

issued securities known as Common Stock, Class A, par value $ .10 per share.

19. The aforesaid Common Stock of defendant 3 I Co., at all times herein mentioned, was sold to the public "over the counter" by certain designated dealers.

20. At all times herein mentioned, defendant Walston was one of the dealers who sold the aforesaid Common Stock of defendant 3 I Co. "over the counter" to the public.

21. Defendant 3 I Co. at all times herein mentioned, was a corporation registered with the Securities and Exchange Commission.

22. Defendant 3 I Co. at all times herein mentioned was a corporation filing periodic reports with the Securities and Exchange Commission.

23. Defendant Marine Midland Bank - New York (hereinafter referred to as "Marine Midland") at all times herein mentioned was and still is a bank duly organized and existing under the laws of New York State.

24. Defendant Marine Midland at all times herein mentioned maintained a fiduciary trust department.

25. Defendant Joel Brownstein (hereinafter referred to as "Brownstein") at all times herein mentioned was an employee of Marine Midland.

26. Defendant Brownstein at all times herein mentioned was employed in the aforesaid fiduciary trust department maintained by defendant Marine Midland.

27. One of the duties of defendant Brownstein's aforesaid employment was the financial analysis and/or financial evaluations of certain business corporations.

28. Another of the duties of defendant Brownstein's aforesaid employment was the preparation of Reports concerning certain business corporations based on the aforesaid financial analysis and/or financial evaluations.

29. Defendant Brownstein prepared a Report concerning defendant 3 I Co. during the year 1971.

30. Defendant Marine Midland had the aforesaid Report printed and/or reproduced.

31. Defendant Brownstein was acquainted with defendant Nissan prior to defendant Brownstein's preparation of the aforesaid Report concerning defendant 3 I Co.

32. At all times herein mentioned, defendant Nissan was a shareholder in the securities of defendant 3 I Co.

33. At all times herein mentioned, defendant Nissan acted as a broker and recommended the purchase of defendant 3 I Co.'s Common Stock.

34. Defendant Nissan was a creditor of defendant 3 I Co.

35. Defendant Brownstein discussed the finances of defendant 3 I Co. with defendant Nissan prior to defendant Brownstein's preparation of this aforesaid Report.

36. At the time of his aforesaid discussion with defendant Nissan, defendant Brownstein knew that defendant Nissan owned securities of defendant 3 I Co.

37. At the time of his aforesaid discussion with defendant Nissan, defendant Brownstein knew that Walston was a dealer and "made a market" in the securities of defendant 3 I Co.

38. Defendant Brownstein informed defendant Nissan that he was preparing the aforesaid Report concerning defendant 3 I Co.

39. Defendant Brownstein's aforesaid Report detailed the financial history of defendant 3 I Co.

40. Defendant Brownstein's aforesaid Report detailed the then present financial condition of defendant 3 I Co.

41. Defendant Brownstein's aforesaid Report contained the estimate of earnings of defendant 3 I Co. for the fiscal year 1971.

42. Defendant Brownstein's aforesaid Report contained projections of future years' earnings of defendant 3 I Co.

43. Defendant Brownstein mailed, delivered and/or distributed copies of the aforesaid Report to other firms, banks and/or brokerage houses in the business and investment community.

44. Defendant Marine Midland, by its officers, employees and/or agents mailed, delivered and/or distributed copies of the aforesaid Report to other firms, banks and/or brokerage houses in the business and investment community.

45. Sometime prior to defendants Brownstein's and Marine Midland's publishing of the aforesaid Report, defendant Nissan advised other firms, brokerage houses and individuals in the business and investment community of the advent of said Report.

46. Defendant Nissan's aforesaid advising of the aforesaid Report to others created a substantial increase in the market price of the securities of defendant 3 I Co.

47. Defendant Brownstein's aforesaid Report when published and/or distributed created a further substantial increase in the market price of the securities of defendant 3 I Co.

48. Defendant Gerald L. Brodsky (hereinafter referred to as "Brodsky") at all times herein mentioned and until December 20, 1971 was the chief Officer and Director of the defendant 3 I Co.

49. Defendant Brodsky at all times herein mentioned and until December 20, 1971 was the major stockholder in defendant 3 I Co. and was referred in the aforesaid annual 3 I Co. Reports to the Securities and Exchange Commission as the "parent" of the defendant 3 I Co.

50. Defendant Brownstein was acquainted with defendant Brodsky prior to defendant Brownstein's preparation of the aforesaid Report concerning defendant 3 I Co.

51. Defendant Brownstein discussed the finances of defendant 3 I Co. with defendant Brodsky prior to defendant Brownstein's preparation of this aforesaid Report.

52. At the time of his aforesaid discussion with defendant Brodsky, defendant Brownstein knew that defendant Brodsky was the major stockholder in defendant 3 I Co.

53. Defendant Brownstein advised defendant Brodsky that he was preparing the aforesaid Report concerning defendant 3 I Co.

54. Defendant Brownstein's aforesaid Report was misleading in that it omitted the fact that a data bank license, a major current asset of defendant 3 I Co. "purchased" from the defendant Excerpta Medica Foundation, and its controlled corporations, and carried "at cost" on 3 I Co.'s balance sheet, was falsely valued and stated and misleading.

55. Defendant Brownstein's aforesaid Report omitted

the fact that this aforesaid data bank license was worthless to defendant 3 I Co.

56. Defendant Brownstein's aforesaid Report omitted the fact that defendant 3 I Co.'s chief officer and major stockholder defendant Brodsky, was annually converting large blocks of Common Stock, Class B into Common Stock, Class A, and that defendant Brodsky was selling same to unsuspecting purchasers.

57. Defendant Brownstein's aforesaid Report omitted the fact that defendant 3 I Co. amended its agreement with defendants S. Kim Kessler and Geraldine Kessler and despite a loss in its subsidiary Scientific Literature Corporation for fiscal year 1970 and without waiting for the earnings of this subsidiary for fiscal 1971, defendant 3 I Co. recklessly, willfully and intentionally issued 44,800 shares of defendant 3 I Co. stock to the shareholders of Scientific Literature Consultants, Inc., of which defendants Kessler were the major stockholders.

58. Defendant Brownstein's aforesaid Report omitted the fact that defendant 3 I Co. had contracted to purchase two (2) worthless corporations, Information Company of America, I.C.A. and Information Corporation of America, paying the shareholders of said corporations shares of the Common Stock, Class A, of defendant 3 I Co. valued at $3,053,857.00.

59. Defendant Brownstein's aforesaid Report omitted the fact that auditor's reports and financial statements of these two (2) corporations, submitted by the officers of these corporations to defendant 3 I Co. during the contract negotiations showed these corporations' worthlessness.

60. Defendant Brownstein's aforesaid Report omitted the fact that defendant 3 I Co. paid $2,960,904.00 for the "intangible assets" of these two (2) corporations, said Information Company of America, I.C.A. and Information Corporation of America.

61. Defendant Nissan at all times herein mentioned purchased and sold the securities of defendant 3 I Co. for his own account.

62. Defendant Nissan was a creditor of defendant 3 I Co. and defendant Nissan converted his loan into 50,000 shares of defendant 3 I Co. paying only two ($2.00) dollars per share thereof.

63. Defendant Nissan at all times herein mentioned was acquainted with defendant Brodsky.

64. Defendant Nissan at all times herein mentioned was acquainted with defendant Brownstein.

65. Defendant Nissan obtained and/or received a copy of the aforesaid Brownstein Report on defendant 3 I Co.

66. Defendant Nissan discussed the finances of defendant 3 I Co. with defendant Brownstein prior to defendant Brownstein's preparation of this aforesaid Report.

67. Defendant Brodsky discussed the finances of defendant 3 I Co. with defendant Brownstein prior to Brownstein's preparation of this aforesaid Report.

68. Immediately following the preparation of defendant Brownstein's aforesaid Report the market price of defendant 3 I Co.'s Common Stock, Class A, increased substantially in price.

69. Defendant Gerald Brodsky owned 154,475 shares of

Common Stock Class B of defendant 3 I Co. on December 1, 1969.

70. Defendant Gerald Brodsky held 38.4% of voting power of defendant 3 I Co. on December 1, 1969.

71. The aforesaid Common Stock, Class B, of defendant 3 I Co., owned by defendant Brodsky was not available for sale on the "open market".

72. Defendant Brodsky at all times herein mentioned periodically converted large blocks of shares of the aforesaid Common Stock, Class B into Common Stock, Class A.

73. The aforesaid Common Stock, Class A, of defendant 3 I Co. received by defendant Brodsky was sold by defendant Brodsky to unsuspecting purchasers.

74. Defendant Brodsky owned 83,175 shares of aforesaid Common Stock B and 24,700 shares of aforesaid Common Stock A on October 15, 1971.

75. Defendant Brodsky resigned as the Chairman of the Board of Directors of defendant 3 I Co. on December 20, 1971.

76. As part of his termination agreement with defendant 3 I Co., defendant Brodsky gave 25,000 shares of 3 I Co. Common Stock, Class A to defendant 3 I Co.

77. As part of his termination agreement with defendant 3 I Co. defendant Brodsky gave 50,000 shares of Common Stock of Datapro Research Corporation to defendant 3 I Co.

78. Defendant Maurice Brodsky, (hereinafter referred to as "Maurice") was the President of American Micromation Industries, Inc. prior to October 13, 1971.

79. Defendant Maurice was the brother of defendant Brodsky.

80. Prior to October 13, 1971, defendant Maurice was a shareholder in the aforesaid Common Stock, Class A of defendant 3 I Co.

81. Prior to October 13, 1971, defendant Maurice owned warrants to purchase Common Stock, Class A of defendant 3 I Co.

82. Prior to October 13, 1971, defendant Maurice was a co-guarantor of a certain defendant 3 I Co. bank loan.

83. Prior to October 13, 1971, defendant 3 I Co. had purchased 29% of the Capital Stock of aforesaid American Micromation Industries, Inc. for the sum of $17,500.00.

84. On October 13, 1971, defendant 3 I Co. purchased the remaining 71% of the Capital Stock of the aforesaid American Micromation Industries, Inc. with Common Stock, Class A of defendant 3 I Co. valued at $605,000.00.

85. In addition to the aforesaid Common Stock and as part of the aforesaid purchase of the remaining interest in the aforesaid American Micromation Industries, Inc., defendant 3 I Co. assumed liability for $105,600.00 in convertible debentures for which it issued 3 I Co. convertible debentures in an equal exchange.

86. Defendant Maurice at the time of the aforesaid purchase by defendant 3 I Co., although concelling some of his shares in American Micromation Industries, Inc. still owned 45,000 shares thereof.

87. Defendant 3 I Co. paid the purchase price of $505,729.00 for the "intangible assets" of said American Micromation Industries, Inc.

88. The aforesaid purchase of American Micromation

Industries, Inc. was worthless and defendant 3 I Co. within several months thereafter wrote off the aforesaid cost of this purchase as a complete loss.

89. On June 30, 1971, defendant 3 I Co. agreed to purchase all of the assets of Information Company of America, I.C.A. and Information Corporation of America with Common Stock, Class A of defendant 3 I Co. valued at $3,053,857.00.

90. The aforesaid purchase agreement was contingent upon the dissolution of a partnership known as Information Company of America, the Partnership and the purchase of the limited partners' interest in the Partnership in exchange for the Common Stock of Information Corporation of America.

91. Defendant 3 I Co. paid the purchase price of $2,960,904.00 for the "intangible assets" of Information Company of America, I.C.A. and Information Corporation of America.

92. Prior to June 30, 1971, and as part of the aforesaid purchase negotiations, defendant 3 I Co. received auditor's certificates and financial statements concerning the earnings and financial condition of Information Company of America, I.C.A., Information Company of America, the Partnership and Information Corporation of America.

93. The aforesaid financial statements and auditor's certificate dated June 21, 1971 stated Information Company of America, the Partnership had sustained losses from April 29, 1969, the date operations commenced, to date.

94. The aforesaid auditor's certificate stated that a significant amount of the assets of Information Company of America,

I.C.A. and Information Corporation of America were invested in Information Company of America, the Partnership.

95. The aforesaid auditor's certificate and financial statements stated that at December 31, 1970, Information Company of America, the Partnership, carried an "asset", deferred development costs, at $60,411.00, which was equivalent to approximately 40% of its total assets.

96. The aforesaid auditor's certificate and financial statements stated that at December 31, 1970, the Information Company of America, I.C.A. carried an "asset", deferred development costs, at $12,500.00, which was equivalent to approximately 13% of its total assets.

97. The aforesaid auditor's certificate stated that Information Company of America, the Partnership was in need of additional working capital for its operations.

98. Information Corporation of America was incorporated on March 7, 1968 and had no operations since that date, other than marketable securities.

99. The balance sheet of Information Corporation of America on March 31, 1971 showed total assets of $36,290.00 of which there were $25,000.00 in marketable securities and $10,000.00 investment in Information Company of America, the Partnership.

100. The balance sheet of Information Company of America, I.C.A., showed a Deficit in the amount of $50,043.00 on December 31, 1970.

101. The statements of operations of Information Company of America, the Partnership, stated a loss for the year 1970 in

the amount $55,818.00 and a loss for the year 1969 in the amount of $95,793.00.

102. Despite all the aforesaid negative information, including losses, deficits and inactivity, defendant 3 I Co. entered into the aforesaid purchase agreement of June 30, 1971.

103. On June 30, 1971 defendants Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher were each Officers and/or Directors of either or both of Information Company of America, I.C.A. and Information Corporation of America.

104. On June 30, 1971, aforesaid defendants Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher were all shareholders of Information Company of America, I.C.A. and Information Corporation of America.

105. On or about September 1, 1971, defendant Arthur W. Elias became President and a Director of defendant 3 I Co., defendant Marvin S. Riesenbach became Vice President, Treasurer and a Director of defendant 3 I Co. and defendants Marvin Schiller and Irving H. Sher became Vice Presidents of defendant 3 I Co.

106. The aforesaid purchases of Information Company of America, I.C.A. and Information Corporation of America were worthless and defendant 3 I Co. within several months thereafter wrote off the aforesaid cost of these purchases a complete loss.

107. On September 19, 1969 defendant 3 I Co. entered into an agreement with defendants Medische Referatan (Excerpta Medica) N.V., Infonet (Excerpta Medica - Rescona) N.V. and Eltrac (Infonet) N.V. for the "purchase" of a "data bank license".

108. The aforesaid agreement included defendant Stichting

Excerpta Medica (Excerpta Medica Foundation) as a party thereto since Stichting Excerpta Medica (Excerpta Medica Foundation) controlled the aforesaid three (3) defendant corporations.

109. Defendants Stichting Excerpta Medica (Excerpta Medica Foundation), Medische Referatan (Excerpta Medica) N.V., Infonet (Excerpta Medica-Rescona) N.V. and Eltrac (Infonet) N.V. (hereinafter referred to as "Excerpta Medica") at all times hereinafter mentioned were and still are Netherland corporations.

110. The aforesaid agreement provided that the agreement shall be governed by and construed in accordance with the law of the State of New York.

111. Defendant Main Lafrentz and Co. (hereinafter referred to as "Lafrentz") at all times herein mentioned were and still are independent certified public accountants.

112. Defendant Lafrentz audited the financial statements of defendant 3 I Co. for fiscal year ended June 30, 1970.

113. One of the financial statements audited by Lafrentz was defendant 3 I Co.'s balance sheet.

114. The balance sheet of defendant 3 I Co. for fiscal year ended June 30, 1970 listed therein as an "asset", "data bank licenses, at cost (Note 1) $1,028,606.00", of which $1,000,000.00 was the purchase cost of defendant Excerpta Medica's data bank license.

115. This "asset", i.e. data bank license, was equivalent to 62% of the entire assets of defendant 3 I Co. for fiscal year 1970.

116. Aforesaid "Note 1" relating to the aforesaid data bank license was contained in "Notes to Consolidated Financial Statements" and stated, "In September, 1969, the Company entered into an agreement, subsequently amended in June, 1970, with Excerpta Medica Foundation, a foreign non-profit corporation, for the exclusive right within the United States to market information services from Excerpta's data bank of biomedical information. The consideration for this right is $1,000,000, including 46,666 shares of Class A common stock issued in October, 1969, which the Company can be required to purchase at $15.00 per share in October, 1971, and 30,000 shares of Class A common stock to be issued on December 1, 1970 which the Company can be required to purchase at $5.00 per share in July, 1971. The shares to be issued on December 1, 1970 have been reflected as outstanding in the accompanying financial statements. At its option, the Company can extend this agreement starting July 1, 1971 and thereafter until 1984 by the payment of additional considerations. An amendment to this agreement affecting the extension of certain dates and changes in additional consideration is currently being negotiated."

117. The aforesaid balance sheet of defendant 3 I Co. for fiscal year ended June 30, 1970 stated therein that the "cost" of this purchase involved "capital in excess of par value" of $842,333.00.

118. As part of their audit of the records of defendant 3 I Co., and using generally accepted standard procedures, defendant Lafrentz was required to read the agreements concerning defendant 3 I Co.'s "purchase" of this data bank license.

119. The aforesaid agreement of September 19, 1969 between defendant Excerpta Medica and defendant 3 I Co. involved 46,666 3 I Co. shares.

120. Although the aforesaid agreement of September 19, 1969 gave defendant Excerpta Medica the "right" to require defendant 3 I Co. to "repurchase" these shares at $15.00 per share, the aforesaid Note 1 reflected the real intent of the parties, that defendant 3 I Co. "can be required to purchase at $15.00 per share in October, 1971 . . .".

121. These "shares" held by defendant Excerpta Medica were never repurchased by defendant 3 I Co. and in the Report for fiscal 1972 by defendant 3 I Co. filed with The Securities and Exchange Commission, these "shares" were characterized as "stock rights, previously granted to certain stockholders to require the Company (3 I Co.) to repurchase 46,666 shares of its Class A common stock (which) have terminated during the year ended June 30, 1972".

122. Defendant Fred Von Eugen (hereinafter referred to as "Von Eugen") was involved in securing the aforesaid agreement between defendants Excerpta Medica and 3 I Co. and for his efforts defendant 3 I Co. agreed by letter dated September 19, 1969 to pay Von Eugen the total amount of $300,000.00; i.e. $150,000.00 with the agreement and $150,000.00 180 days thereafter.

123. The "aggregate" consideration for the "purchase at cost" of the data bank license of $1,000,000.00 was determined by defendant 3 I Co. as $300,000.00 for defendant Von Eugen plus 46,666 3 I Co. shares for defendant Excerpta Medica.

124. Upon signing the aforesaid letter agreement with

defendant Von Eugen, defendant 3 I Co. never reflected on its balance sheet as a current liability thereunder of $150,000.00.

125. Defendant 3 I Co. never paid the balance of $150,000.00 "due" to defendant Von Eugen on or about April 27,1970.

126. This "balance due to Von Eugen" of $150,000.00 was changed into 30,000 shares of 3 I Co.'s Common Stock, Class A for defendant Von Eugen by a second letter agreement dated June 15,1970.

127. Although this said second letter agreement gave defendant Von Eugen the "right" to require defendant 3 I Co. to "repurchase" these 30,000 shares at $5.00 per share, the aforesaid Note 1 once again reflected the real intent of the parties, that defendant 3 I Co. "can be required to repurchase 30,000 shares of Class A common stock . . .".

128. These "shares" held by Von Eugen were never repurchased by defendant 3 I Co. and in the Report for fiscal 1972 of defendant 3 I Co. filed with The Securities and Exchange Commission, these "shares" were characterized as "stock rights" wherein defendant 3 I Co. "has entered into an agreement with a stockholder to issue 7,500 shares of its Class A common stock in exchange for cancellation of that stockholder's rights to require the Company (3 I Co.) to repurchase or register 30,000 shares".

129. The total consideration for the acquisition by defendant 3 I Co. for the aforesaid data bank license was in effect $150,000.00 plus 7,500 shares of common stock A

130. There was never purchase "at cost" by defendant 3 I Co. of Excerpta Medica's data bank license for $1,000,000.00.

131. Defendant Lafrentz in its aforesaid Certificates omitted the facts concerning the aforesaid letter agreements between defendants Von Eugen and 3 I Co.

132. Defendant Lafrentz in this aforesaid Certificate omitted the facts that defendant 3 I Co. had failed to pay defendant Von Eugen the second payment of 150,000.00.

133. Defendant Lafrentz issued its Certificate despite the fact that defendant 3 I Co.'s aforesaid balance sheet listed an asset purchased at cost of $1,000,000.00, which price was never paid.

134. Defendant Lafrentz permitted defendant 3 I Co. to materially inhance its balance sheet assets using legended stock, in effect stock rights, as the purchase of an "asset at cost".

135. Defendant Excerpta Medica never received any money under the terms of its aforesaid agreement with defendant 3 I Co.

136. Defendant Excerpta Medica never required defendant 3 I Co. to repurchase the 46,666 shares.

137. Defendant Excerpta Medica accordingly has received no consideration from defendant 3 I Co. for its data bank license.

138. Defendant Von Eugen's total consideration from defendant 3 I Co. for his services in connection with the data bank license was $150,000.00 and 7,500 shares of 3 I Co. Common Stock, Class A.

139. The aforesaid data bank license was worthless to defendant 3 I Co. and in fiscal 1972, defendant 3 I Co. wrote off the $1,000,000.00 "cost" as a complete loss.

140. Defendant Peter Warren (hereinafter referred to as

"Warren") at all times herein mentioned was an employee of defendant Excerpta Medica.

141. Defendant Warren was designated by defendant Excerpta Medica as its attorney-in-fact and agent under the aforesaid agreement of September 19, 1969.

142. Defendant Warren was a Director of defendant 3 I Co.

143. Pursuant to an Agreement and Plan of Reorganization dated April 25, 1969 and Amendment thereto on October 21, 1969 between defendant 3 I Co., Scientific Literature Corporation, Scientific Literature Consultants, Inc. and defendants S. Kim Kessler and Geraldine Kessler (hereinafter together referred to as "Kessler") Scientific Literature Consultants, Inc. was merged into Scientific Literature Corporation, a subsidiary of defendant 3 I Co.

144. Pursuant to the aforesaid Agreement, 32,000 shares of defendant 3 I Co.'s Common Stock, Class A were issued to shareholders of Scientific Literature Consultants, Inc. and an additional 12,800 shares were held in an escrow fund pending Scientific Literature Corporation's achieving certain earnings during the period of its operations from the date of the merger through June 30, 1971.

145. The aforesaid agreement also provided that the shareholders of Scientific Literature Consultants, Inc. might become entitled to receive up to 44,800 additional shares of 3 I Co. stock dependent upon Scientific Literature Corporation's earning record during the aforesaid period.

146. Defendants Kessler owned a substantial amount of

shares in Scientific Literature Consultants, Inc.

147. After the aforesaid agreement defendants Kessler were employed by defendant 3 I Co. to manage Scientific Literature Corporation.

148. For the year ended June 30, 1970, Scientific Literature Corporation sustained a net earnings loss.

149. Despite the aforesaid loss of earnings by Scientific Literature Corporation for the year ended June 30, 1970 and with the aforesaid provisions of the aforesaid Agreement as to the earnings of Scientific Literature Corporation to June 30, 1971, defendant 3 I Co. entered into a "Second Amendment", dated November 2, 1970, whereby the earnings paragraph of the original Agreement was declared null and void and the additional 44,800 shares of 3 I Co. stock were issued to the shareholders of Scientific Literature Consultants, Inc.

150. Defendant Lafrentz in its aforesaid Certificate omitted the fact that Scientific Literature Corporation had sustained a net earnings loss for the year ended June 30, 1970.

151. Defendant 3 I Co. has never filed a report with The Securities and Exchange Commission that the earnings of Scientific Literature Corporation during the period of its operations from the date of the merger through June 30, 1971 was profitable, in support of its "Second Amendment".

152. Plaintiff did not learn the untruths, omissions and/or aforesaid actions of the aforesaid defendants until after defendant 3 I Co. filed its annual 10 K Report for its fiscal year ended June 30, 1972. In this Report, defendant 3 I Co. wrote off

its worthless acquisitions, as aforesaid; American Micromation Industries, Inc., Information Company of America, I.C.A., Information Corporation of America and the data bank license. These write offs in fiscal year ended June 30, 1972 as "charged extraordinary items" totalled $4,303,340.00. Furthermore defendant 3 I Co. disclosed the nature of defendant Nissan's "insider" involvement as a 3 I Co. creditor and purchaser of a large block of 3 I Co. stock at a minimal cost. Plaintiff also became aware of the omissions and untruths in defendant Brownstein's aforesaid Report in the light of defendant 3 I Co.'s aforesaid annual 10K report.

COUNT I

153. That at all times hereinbefore mentioned and as aforesaid, and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendants 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren participated singly, acted in concert and/or in furtherance of their common fraudulent combination employed the scheme of a purchase agreement for the data bank license to defraud plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination engaged in a course of business relating to said data bank license which operated as a fraud on plaintiff and the class; aforesaid defendants with the knowledge, assistance and connivance of each other did engage in the aforesaid purchase agreement of the data

bank license scheme and conspiracy and the misrepresentations, omissions and untruths thereof, to willfully, directly or indirectly, defraud plaintiff and the class by affecting the value of the 3 I Co. Common Stock and thus affecting the purchase and sale of 3 I Co. Common Stock and by so doing caused plaintiff and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; aforesaid defendants falsely stated consideration for this data bank license purchase; aforesaid defendants caused the balance sheet of defendant 3 I Co. to be grossly inflated and exaggerated both as to assets and capital, so as to mislead plaintiff and the class; defendants 3 I Co., Brodsky, Excerpta Medica and Warren falsely and/or misleadingly specified as the consideration for the data bank license purchase agreement 46,666 3 I Co. shares, whereas their intention was to issue 46,666 stock rights which rights they further intended never to use; defendants 3 I Co., Brodsky and Von Eugen falsely and/or misleadingly specified as the consideration for Von Eugen's services in connection with the aforesaid purchase agreement 30,000 3 I Co. shares, whereas their intention was to issue 30,000 stock rights which rights they never fully intended to use; aforesaid defendants 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren participated singly, acted in concert and/or in furtherance of their common fraudulent combination made false and misleading statements of material facts and omitted to state material facts which were necessary to be made in order to make such statements not misleading; aforesaid defendants participated singly, acted in concert and/or in furtherance of the common fraudulent action purchased this worthless

data bank license so as to defraud, deceive and/or mislead plaintiff and the class; said defendants Excerpta Medica, Von Eugen and Warren aided and abetted defendants 3 I Co. and Brodsky by nondisclosure and silence and inaction as to the aforesaid misrepresentations and omissions of material facts made by defendants 3 I Co. and Brodsky and by the aforesaid misrepresentations and omissions of material facts made by defendants Excerpta Medica, Von Eugen and Warren so as to mislead plaintiff and the class; defendants Excerpta Medica, Von Eugen and Warren knew or should have known of defendants 3 I Co. and Brodsky's aforesaid actions to defraud, deceive and/or mislead plaintiff and the class.

154. As the result of the aforesaid, the common stock of defendant 3 I Co. was caused to have substantial aritificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($.50) per share.

155. As the result of the aforesaid, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co.

156. Plaintiff and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT II

157. That at all times hereinbefore mentioned and as aforesaid and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendants

3 I Co., Brodsky and Kessler participated singly, acted in concert and/or in furtherance of their common fraudulent combination employed a scheme to enter into the aforesaid "Second Amendment" to their Agreement so to defraud plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination engaged in a course of business relating to this "Second Amendment" which operated as a fraud on plaintiff and the class; aforesaid defendants with the knowledge, assistance and connivance of each other did engage in the aforesaid "Second Amendment" to their Agreement scheme and conspiracy and the misrepresentations, omissions and untruths thereof, to willfully, directly and indirectly, defraud plaintiff and the class by affecting the value of the 3 I Co. Common Stock and thus affecting the purchase and sale of 3 I Co. Common Stock and by so doing caused plaintiff and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; despite the loss for the Scientific Literature Corporation for fiscal 1970 aforesaid defendants entered into "Second Amendment" in order to defraud, deceive and/or mislead plaintiff and the class; and aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination made false and misleading statements and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiff and the class.

158. As the result of the aforesaid, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worth-

less and at present is quoted at less than fifty ($.50) per share.

159. As the result of the aforesaid, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co.

160. Plaintiff and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT III

161. That at all times hereinbefore mentioned and as aforesaid and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendant Lafrentz failed to disclose major misstatements and omissions of material facts in Reports they certified; defendant Lafrentz failed to disclose the entire facts concerning the data bank license cost in their Certificates and Reports; defendant Lafrentz failed to disclose in their Certificates and Reports the fact that Scientitic Literature Corporation had sustained a loss of earnings for fiscal year 1970 as applicable to the aforesaid "Second Amendment" between defendants 3 I Co., Brodsky and Kessler; defendant Lafrentz aided and abetted the non-disclosures of defendants 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren as to the aforesaid purchase agreement of the data bank license in order to defraud, deceive and/or mislead plaintiff and the class; defendant Lafrentz aided and abetted the misrepresentations of defendants 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren as to the aforesaid purchase

agreement in order to defraud, deceive and/or mislead plaintiff and the class; defendant Lafrentz aided and abetted the non-disclosures of defendants 3 I Co., Brodsky and Kessler as to the aforesaid "Second Amendment"; defendant Lafrentz aided and abetted the misrepresentations of defendants 3 I Co., Brodsky and Kessler as to the aforesaid "Second Amendment" in order to defraud, deceive and/or mislead plaintiff and the class; defendant Lafrentz knew or should have known of the non-disclosures and misrepresentations of defendants 3 I Co., Excerpta Medica, Von Euger and Warren as to the aforesaid data bank purchase agreement; and defendant Lafrentz knew or should have known of the non-disclosures and misrepresentations of defendants 3 I Co., Brodsky and Kessler as to their "Second Amendment" to their original Agreement.

162. As the result of the aforesaid, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($.50) per share.

163. As the result of the aforesaid, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co.

164. Plaintiff and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00

COUNT IV

165. That at all times hereinbefore mentioned and as aforesaid and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The

Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendants 3 I Co., Brodsky and Maurice participated singly, acted in concert and/or in furtherance of their common fraudulent combination employed a scheme to purchase the remaining interest in American Micromation Industries, Inc. so as to defraud plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination engaged in a course of business in purchasing the remaining interest in American Micromation Industries, Inc. which operated as a fraud on plaintiff and the class; aforesaid defendants with the knowledge, assistance and connivance of each other did engage in the purchase of the worthless remaining interest in American Micromation Industries, Inc. scheme and conspiracy and the misrepresentations, omissions and untruths thereof, to willfully, directly and indirectly, defraud plaintiff and the class by affecting the value of the 3 I Co. Common Stock and thus affecting the purchase and sale of 3 I Co. Common Stock and by so doing caused plaintiff and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; despite the fact that aforesaid defendants knew that the purchase price of the aforesaid remaining interest was grossly disproportionate to the original purchase of an interest therein, aforesaid defendants consummated the purchase in order to defraud, deceive and/or mislead plaintiff and the class; aforesaid defendants failed to act at "arms-length" for the purchase negotiations in order to defraud, deceive and/or mislead plaintiff and the class; aforesaid defendants participated singly,

acted in concert and/or in furtherance of their common fraudulent combination made false and misleading statements and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination purchased this worthless remaining interest in aforesaid American Micromation Industries, Inc. so as to defraud, deceive and/or mislead plaintiff and the class.

166. As the result of the aforesaid, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($.50) per share.

167. As the result of the aforesaid, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co.

168. Plaintiff and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT V

169. That at all times hereinbefore mentioned and as aforesaid and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendants 3 I Co., Brodsky, Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher participated singly, acted in concert

and/or in furtherance of their common fraudulent combination employed a scheme to purchase the assets of Information Company of America, I.C.A. and Information Corporation of America so as to defraud plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination engaged in a course of business in purchasing the assets of these aforesaid corporations which operated as a fraud on plaintiff and the class; aforesaid defendants with the knowledge, assistance and connivance of each other did engage in the aforesaid purchase of the worthless assets of these aforesaid corporations scheme and conspiracy and the misrepresentations, omissions and untruths thereof, to willfully, directly and indirectly, defraud plaintiff and the class by affecting the value of the 3 I Co. Common Stock and thus affecting the purchase and sale of 3 I Co. Common Stock and by so doing caused plaintiff and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; despite the fact that these defendants knew that one of these corporations was inactive and that the other corporation was in deficit, aforesaid defendants consummated this purchase in order to defraud, deceive and/or mislead plaintiff and the class; aforesaid defendants failed to act at "arms-length" for the purchase negotiations in order to defraud, deceive and/or mislead plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of the common fraudulent combination made false and misleading statements and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiff

and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of the common fraudulent combination purchasing these worthless assets of these aforesaid worthless corporations so as to défraud, deceive and/or mislead plaintiff and the class.

170. As the result of the aforesaid, the common stock of defendant 3 I Co. was caused to have a substantial aritificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($.50) per share.

171. As the result of the aforesaid, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co.

172. Plaintiff and the class sustained substantial losles as the result of the foregoing in the amount of $15,000,000.00.

COUNT VI

173. That at all times hereinbefore mentioned and as aforesaid and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendant Nissan employed schemes and/or artifices to defraud plaintiff and the class; defendant Nissan participated singly, acted in concert and/or in furtherance of their common fraudulent combinations with defendants Brownstein, 3 I Co., Brodsky, Maurice, Kessler, Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher, employed schemes and/or artifices to defraud plaintiff and the

class; defendant Nissan engaged in acts, practices and/or a course of business which operated as a fraud on plaintiff and the class; defendant Nissan participated singly, acted in concert and/or in furtherance of common fraudulent combinations with defendants Brownstein, 3 I Co., Brodsky, Maurice, Kessler, Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher, engaged in acts, practices and/or a course of business which operated as a fraud on plaintiff and the class; defendant Nissan in furtherance of the common fraudulent combinations into which all of these aforesaid defendants had entered and were made on behalf of the aforesaid defendants with intent to deceive and/or defraud plaintiff and the class discussed the finances of defendant 3 I Co. with defendant Brownstein prior to defendant Brownstein's preparation of a Report on defendant 3 I Co. and advised other firms, brokerage houses and individuals in the business and investment community of the advent of said Report; defendant Nissan was in a collusive position as to defendant 3 I Co. as a shareholder and creditor thereof and being employed as a broker by defendant Walston, a dealer in defendant 3 I Co.'s securities; defendant Nissan participated singly, acted in concert and/or in furtherance of the common fraudulent combinations made false and/or misleading statements and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiff and the class; defendant Nissan knew or should have known that his statements as to the finances of defendant 3 I Co. were untrue and that his evaluations of 3 I Co.'s the then present financial condition and business operations and its future earnings and

prospects were incorrect so as to defraud, deceive and/or mislead plaintiff and the class; the defendant Walston failed to exercise reasonable supervision over defendant Nissan to prevent all the aforesaid; defendant Walston by its silence and inaction permitted defendant Nissan to defraud, deceive and/or mislead plaintiff and the class.

174. As the result of the aforesaid, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas sais common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

175. As the result of the aforesaid, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co.

176. Plaintiff and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT VII

177. That at all times hereinbefore mentioned and as aforesaid and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendant Brownstein employed a scheme to defraud plaintiff and the class; defendant Brownstein participated singly, acted in concert and/or in furtherance of common fraudulent combinations with defendants 3 I Co., Nissan, Brodsky and Maurice employed a scheme to defraud plaintiff and the class; defendant Brownstein engaged in the act

of preparing a Report on defendant 3 I Co. which operated as a fraud on plaintiff and the class; defendant Brownstein participated singly, acted in concert and/or in furtherance of common fraudulent combinations with defendants 3 I Co., Nissan, Brodsky and Maurice engaged in the act of preparing a Report on defendant 3 I Co. which operated as a fraud on plaintiff and the class; defendant Brownstein in furtherance of the common fraudulent combinations into which all of these aforesaid defendants had entered and were made on behalf of the aforesaid defendants with intent to deceive and defraud plaintiff and the class prior to his preparation of his aforesaid Report on defendant 3 I Co. discussed the finances of said defendant 3 I Co. with defendant Nissan, Brodsky and Maurice; defendant Brownstein participated singly, acted in concert and/or in furtherance of the common fraudulent combinations prepared the aforesaid Report on defendant 3 I Co. which Report contained false and/or misleading statements and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiff and the class; defendant Brownstein knew or should have known that his aforesaid Report contained inflated reports, untrue statements, incorrect statements and evaluations of defendant 3 I Co.'s past and present financial condition and business operations and reckless projections of defendant 3 I Co.'s future earnings and prospects so as to defraud, deceive and/or mislead plaintiff and the class; defendant Brownstein failed to sufficiently investigate the known information of defendant 3 I Co.'s finances which would lead to other information which should have been incorporated in his aforesaid Report; and defendant Brownstein

failed to properly investigate the finances of defendant 3 I Co. before preparing his aforesaid Report so as not to defraud, deceive and/or mislead plaintiff and the class; the defendant Marine Midland failed to exercise reasonable supervision over defendant Brownstein to prevent all of the aforesaid; defendant Marine Midland by its silence and inaction permitted defendant Brownstein to defraud, deceive and/or mislead plaintiff and the class.

178. As the result of the aforesaid, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

179. As the result of the aforesaid, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co.

180. Plaintiff and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

JUDGMENT

WHEREFORE, plaintiff and the Class demands judgment against defendants, as follows:

(a) that this action be declared as maintained as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure;

(b) that defendants be adjudged jointly and severally liable to plaintiff and the plaintiff class for compensatory damages in the amount of $15,000,000.00 and, in addition, punitive damages;

(c) that plaintiff be awarded costs and reasonable counsel's fees,

together with such other and further relief as to this Court shall appear just and equitable.

Robert R. Felton

ROBERT R. FELTON.
Attorney for the Class
42 Third Avenue
Mineola, New York 11501
516-746-5711

NOTICE OF MOTION BY MARINE MIDLAND TO COMPEL PLAINTIFF TO APPEAR FOR DEPOSITION (Filed September 5, 1973)

MEMO. ENDORSED

U.S. DISTRICT COURT FILED SEP 5 1973 S.D. OF N.Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

73 Civ. 2200-DBB

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that, upon the annexed affidavit of Richard G. Lyon, sworn to September 4, 1973, the supporting memorandum, and all prior proceedings herein, defendant Marine Midland Bank-New York, by its undersigned attorneys, will move this Court on September 17, 1973, before Honorable Dudley B. Bonsal, United States Court House, Foley Square, New York, New York at 9:30 A.M. or as soon thereafter as counsel may be heard, for an order, pursuant to Rule 37 of the Federal Rules of Civil Procedure, compelling the plaintiff to appear for deposition upon oral examination by defendant Marine Midland Bank-New York, by reason of the failure of the plaintiff to appear for deposition pursuant to notice, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 4, 1973

Yours, etc.,

SULLIVAN & CROMWELL

By _____
(A Member of the Firm)
Attorneys for Defendant
Marine Midland Bank-New York
48 Wall Street
New York, New York 10005
[illegible]-8100

AFFIDAVIT OF RICHARD G. LYON IN SUPPORT OF MOTION DATED SEPTEMBER 4, 1973

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON, Plaintiff,	:	73 Civ. 2200-DBB
-against-	:	AFFIDAVIT
WALSTON AND CO., INC., et al., Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RICHARD G. LYON, being duly sworn, deposes and says:

1. I am a member of the bar of this Court, associated with the firm of Sullivan & Cromwell, counsel to defendant Marine Midland Bank-New York ("Marine Midland") in this action. I make this affidavit in support of Marine Midland's motion for an order compelling plaintiff to appear for deposition upon oral examination in this action. The affidavit is also submitted as required by Rule 9(f) of the General Rules of this Court.

2. The original complaint in this action was served on Marine Midland on May 23, 1973. By notice dated July 3, 1973, Marine Midland noticed the deposition of plaintiff upon oral examination for July 13, 1973. By order of this Court dated July 13, 1973, the deposition of plaintiff was adjourned to August 1, 1973.

3. During oral argument on various motions on July 20, 1973, this Court ordered all discovery stayed pending determination of the motions. The motions were decided on July 27, 1973, and on August 9, 1973, plaintiff served an amended complaint on defendants.

4. By letter dated August 6, 1973, I advised plaintiff that we would proceed with his deposition pursuant to the original notice as modified by the order of July 13, on August 16, 1973. A copy of this letter is annexed as Exhibit A.

5. By letter dated August 10, 1973, the plaintiff advised that he would be unavailable for deposition until August 30, 1973. A copy of this letter is annexed hereto as Exhibit B.

6. In a telephone conversation initiated by me on August 13, 1973, the plaintiff and I agreed that Marine Midland would take his deposition on August 27, 1973. I subsequently confirmed this by letter to the plaintiff dated August 15, 1973. A copy of this letter is annexed hereto as Exhibit C.

7. By letter dated August 16, 1973, Richard W. Lyon, Esq. advised me that Breed, Abbott & Morgan, counsel to defendants Walston & Co., Inc. ("Walston") and James Nissan ("Nissan") would not attend the deposition on August 27, and that counsel to said defendants "reserve [their] right to depose [plaintiff] on behalf of Walston and Nissan on some subsequent occasion." A copy of this letter is annexed hereto as Exhibit D.

8. I was out of my office during the week of August 20 on another matter, and on Thursday, August 23, I telephoned plaintiff's office from Los Angeles to confirm that Marine Midland intended to proceed with his deposition on August 27. I did not speak with plaintiff, but I left that message with his office. Later on August 23 plaintiff

returned the call while I was in deposition, and left word that he would not attend the deposition. I attempted to telephone plaintiff, and called his office once again on August 23 and twice on August 24. On each occasion I was unable to speak with plaintiff, but left with his office the message that we intended to proceed with the deposition.

8. On August 27, 1973, William E. Willis, Esq. (of Sullivan & Cromwell) and I appeared at the agreed-upon time and place to take plaintiff's deposition. Plaintiff did not appear for deposition and his default and the circumstances thereof were duly noted on the record. Also on August 27 I notified plaintiff by telegram of our notice of default and our intention to move this Court for appropriate sanctions. A copy of the telegram is annexed hereto as Exhibit E.

9. By letter dated August 28, 1973, plaintiff agreed to appear for deposition on September 5, 1973, as requested in my telegram. A copy of this letter is annexed hereto as Exhibit F.

10. On Friday, August 31, I received a telephone call in Miami from plaintiff, who advised that he would not appear for deposition on September 5, or at any subsequent date unless ordered to do so by this Court.

11. In view of the plaintiff's repeated failure to appear for deposition on dates agreed upon between him and counsel for Marine Midland, I respectfully request that this Court issue an order compelling the plaintiff to appear for deposition.

12. On September 4, 1973, I received a letter from plaintiff dated August 31, 1973. A copy of this letter is annexed as Exhibit G. The text of the letter confirms the telephone conversation referred to in paragraph 10 of this affidavit, and also indicates that further efforts to resolve this issue short of formal motion, as required by Rule 9(f) of the General Rules of this Court, would be fruitless.

Richard G. Lyon
RICHARD G. LYON

Sworn to before me this
4th day of September 1973.

Peter J. Petino
Notary Public

PETER J. PETINO
Notary Public, State of New York
No. 41-8344120
Qualified in Queens County
Commission Expires March 30, 1974

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

EXHIBIT A - LETTER FROM SULLIVAN AND CROMWELL TO ROBERT R. FELTON DATED AUGUST 6, 1973 77a

SULLIVAN & CROMWELL

NEW YORK TELEPHONE: (212) 422-3100
TELEX: 62694 (INTERNATIONAL), 127816 (DOMESTIC)
CABLE ADDRESS: LADYCOURT, NEW YORK

48 WALL STREET, NEW YORK 10005

250 PARK AVENUE, NEW YORK 10017
17, AVENUE MATIGNON, 75008 PARIS
21 IRONMONGER LANE, LONDON EC2V 8JS

August 6, 1973

Robert R. Felton, Esq.,
42 Third Avenue,
Mineola, New York 10501.

Re: Felton v. Walston & Co., Inc., et al.

Dear Mr. Felton:

During argument on the various motions on July 23, Judge Bonsal directed that all discovery be stayed pending his decision on these motions. As the motions have now been decided, we are prepared to proceed with your deposition, pursuant to notice, dated July 3, 1973, and adjourned by order, dated July 13, 1973, to August 1.

Please note that we will proceed with your deposition pursuant to said notice on August 16, 1973, at the time and place set by said order. (If you have a conflict on this date please call me promptly and we can endeavor to work out an agreement on an adjournment.)

Sincerely yours,

Richard G. Lyon

cc: Julius Winn, Esq.
Richard W. Lyon, Esq.

EXHIBIT B - LETTER FROM ROBERT R. FELTON TO SULLIVAN AND CROMWELL DATED AUGUST 10, 1973

Robert R. Felton
Attorney at Law

112 Third Avenue
Mineola, N.Y. 11501

PIONEER 6-5711

August 10, 1973

Sullivan and Cromwell
48 Wall Street
New York, New York 10005

Re: Felton vs. Walston and Co., Inc., et al.

Att: Richard Lyon, Esq.

Dear Sirs:

In reply to your letter of August 6, 1973 wherein you proposed a new date for my deposition, I wish to state that in view of the fact that an Amended Complaint has just been served on your office as attorneys for defendants Brownstein and Marine Midland Bank - New York, the earliest date that I would be available for this deposition would be August 30, 1973.

I understand that Mr. Jules Winn of Leon, Weill and Mahony and Mr. Richard W. Lyon of Breed, Abbott and Morgan have been advised of your suggested deposition date and that they plan to be present at my deposition. In the spirit of fairness I request that all three (3) attorneys be present and finish at one time with my deposition.

If this date is agreeable to all of you, I will be available at 10 a.m. on August 30, 1973 at United States District Court, Room 601, United States Courthouse to begin my deposition.

Respectfully yours,

Robert R. Felton

Robert R. Felton

RRF:pc

cc: Jules Winn, Esq. of Leon, Weill and Mahony
Richard W. Lyon, Esq. of Breed, Abbott and Morgan
Honorable Judge Dudley Bonsal

EXHIBIT C - LETTER FROM SULLIVAN AND CROMWELL TO ROBERT R. FELTON DATED AUGUST 15, 1973

SULLIVAN & CROMWELL

NEW YORK TELEPHONE: (212) 422-3100
TELEX: 62694 (INTERNATIONAL); 127816 (DOMESTIC)
CABLE ADDRESS: LADYCOURT, NEW YORK

48 WALL STREET, NEW YORK 10005

250 PARK AVENUE, NEW YORK 10017
17, AVENUE MATIGNON, 75008 PARIS
21 IRONMONGER LANE, LONDON EC2V 8JB

August 15, 1973

Robert R. Felton, Esq.
42 Third Avenue
Mineola, New York 11501

Re: Felton v. Walston & Co., Inc. et al.

Dear Mr. Felton:

To confirm our telephone conversation of Monday afternoon, defendant Marine Midland Bank-New York will take your deposition in the above action at 10 a.m. on Monday, August 27, Room 601, United States Court House, Foley Square, New York City, pursuant to the Notice dated July 3, 1973, as modified by order of July 13, 1973.

I enclose herewith an amended Schedule to the original notice of deposition and request for production of documents (dated July 3, 1973), which shall apply to the deposition on August 27.

Very truly yours,

Richard G. Lyon

(Enclosure)

cc: Richard W. Lyon, Esq.
Julius Winn, Esq.

EXHIBIT D - LETTER FROM BREED, ABBOTT AND MORGAN TO ROBERT R. FELTON AND SULLIVAN & CROMWELL DATED AUGUST 16, 1973

BREED, ABBOTT & MORGAN
ONE CHASE MANHATTAN PLAZA
NEW YORK, N.Y. 10005

TELEPHONE
(212) 944-4800

ABLE ADDRESS
BREEDABBOT

TELEX
12-5672

...CUT AVENUE NW
WASHINGTON, D. C. 20006

August 16, 1973

Richard G. Lyon, Esq.
Sullivan & Cromwell
48 Wall Street
New York, N.Y. 10005

Robert R. Felton, Esq.
42 Third Avenue
Mineola, New York 11501

Re: Felton v. Walston & Co., Inc. et al.

Gentlemen:

I have received a copy of Mr. Lyon's letter to Mr. Felton dated August 15, 1973, advising that defendant Marine Midland Bank-New York will take the deposition of the plaintiff on August 27, 1973. Neither Mr. Kelly nor myself will be able to attend a deposition on that date since we will both be out of town on vacation.

Accordingly, we request that the deposition of the plaintiff be adjourned to a date subsequent to Labor Day and, of course, in the event that Mr. Felton is deposed on August 27, reserve our right to depose him on behalf of Walston and Nissan on some subsequent occasion.

Sincerely,

Richard W. Lyon

Richard W. Lyon

cc: Leon, Weill & Mahoney, Esqs.
261 Madison Avenue
New York, N.Y. 10016

EXHIBIT E - LETTER FROM SULLIVAN AND CROMWELL TO ROBERT R. FELTON

Mineola, New York

Re: Felton v. Walston, et al.

Dear Mr. Felton:

Upon your failure to appear for deposition this morning, defendant Marine Midland Bank - New York noted your default, and the circumstances thereof, on the record and is prepared to move the Court for appropriate sanctions. The motion for sanctions will be deferred if you agree to appear for your deposition on Wednesday, September 5, 1973 at 10 a.m. in Room 601, United States Court House, Foley Square, New York. The revised Schedule for production of documents enclosed with my letter to you of August 15, 1973, will apply to this deposition.

I have discussed the September 5 deposition date with Julius Winn of Leon Weill & Mahoney and with Richard W. Lyon of Breed, Abbott & Morgan and neither raised any objection to that date.

If the above is acceptable, please advise immediately.

Richard G. Lyon

Sullivan & Cromwell,
Attorneys for Defendant
Marine Midland Bank-
New York

EXHIBIT F - LETTER FROM ROBERT R. FELTON TO SULLIVAN AND CROMWELL DATED AUGUST 28, 1973

Robert R. Felton
Attorney at Law

112 Third Avenue
Mineola, N.Y. 11501

PIONEER 6-5711

certified mail

August 28, 1973

Sullivan and Cromwell
48 Wall Street
New York, N.Y. 10005

Re: Felton v. Walston and Co., Inc., et al.

Att: Richard Lyon, Esq.

Dear Sir:

We never agreed to my appearance for August 27, 1973, and I categorically reject your terming my so-called "default."

Please be advised that it is my sole intention to move this action along to a speedy conclusion. This can be readily accomplished amicably or otherwise. My hope would be for an amicable relationship.

You were previously informed by my letter of August 20th that I would be available for my deposition by all three (3) attorneys on September 6, 1973. Furthermore Breed, Abbott and Morgan also had requested that you adjourn my deposition subsequent to Labor Day.

Instead of responding to my letter as well as Breed, Abbott and Morgan's letter, you insisted unilaterally on taking your "default." I do not understand what you accomplished by this unilateral action.

In any event I will be available for my deposition at 10 A.M. on September 5, 1973 in Room 601, United States Courthouse provided that as stated in your telegram Mr. Jules Winn of Leon, Weill and Mahony and Richard W. Lyon of Breed, Abbott and Morgan will appear on this date and time or that they agree to be bound by my deposition.

Robert R. Felton
Attorney at Law

42 Third Avenue
Mineola, N.Y. 11501

PIONEER 6-5711

Re: Felton v. Walston and Co., Inc., et al.

To this end I am sending copies of this letter to them by certified mail. If either or both of them object to this date, I request that they advise me accordingly by no later than September 1, 1973 in which event we may require another date for all parties to agree on.

Respectfully yours,

Robert R. Felton

Robert R. Felton

RRF:dw

Copies to Jules Winn, Esq. of Leon, Weill and Mahony
Richard W. Lyon, Esq. of Breed, Abbott and Morgan

EXHIBIT G - LETTER FROM ROBERT R. FELTON TO SULLIVAN AND CROMWELL DATED AUGUST 31, 1973

Robert R. Felton
Attorney at Law

42 Third Avenue
Mineola, N.Y. 11501

PIONEER 6-5711

August 31, 1973

Sullivan and Cromwell
48 Wall Street
New York, N.Y. 10005

Re: Felton v. Walston and Co., Inc., et al.

Att: Richard Lyon, Esq.

Dear Sir,

You were quite correct in stating that Jules Winn threw a "monkey-wrench" into our plans for my deposition on September 5, 1973, by his letter of August 29th.

Furthermore, Mr. Clinton Gettig has informed me that defendant 3I Co./Information Interscience, Inc. has defaulted and not appeared on August 20, 1973 pursuant to my Notice of Deposition upon Written Questions.

In view of the foregoing I believe that we should move the Court to obtain pre-trial orders for discovery and depositions herein.

Respectfully yours,

Robert R. Felton

Robert R. Felton

RRF:dw

Copies to: Richard W. Lyon of Breed, Abbott and Morgan
Jules Winn of Leon, Weill and Mahony

By WILLIAM E. WILLIS
(A Member of the Firm)
Attorneys for Defendant
Marine Midland Bank-New York
48 Wall Street
New York, New York 10005
(212) 422-8100

ANSWER OF DEFENDANT JOEL BROWNSTEIN (Filed September 5, 1973)
TO AMENDED COMPLAINT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,		
	Plaintiff,	: No. 73 Civ. 2200 DBB
	against-	: ANSWER OF DEFENDANT JOEL BROWNSTEIN
WALSTON AND CO., INC., et al.,		:
	Defendants.	:

Defendant Joel Brownstein ("Brownstein"), by his attorneys, Sullivan & Cromwell, answering the amended complaint herein:

FIRST DEFENSE

1. Denies the allegations contained in paragraph 1, except admits that plaintiff purports to assert claims against defendants under the Securities Exchange Act of 1934, the Securities Act of 1933, "the rules and regulations of the Securities and Exchange Commission promulgated thereunder", the General Business Law of the State of New York, and common law principles.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2, except admits: (i) that some of the acts and transactions described in the amended complaint purportedly occurred within the Southern District of New York; (ii) that defendant Marine Midland Bank-New York ("Marine Midland") has branch banks located in various places in the City of New York; and (iii) that defendant Walston & Co., Inc. ("Walston") maintains brokerage offices within the Southern District of New York.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3 and 4.

4. Denies the allegations contained in paragraph 5, except admits that plaintiff purports to bring this action "individually and as a class action", and that plaintiff defines the purported class in said paragraph 5.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.

6. Denies the allegations contained in paragraphs 7, 8, 9, 10 and 11.

7. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraph 12.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13, except admits that defendant James Nissan ("Nissan"), (i) was a registered representative licensed to purchase and sell securities and (ii) was at one time an employee of defendant Walston.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 14, 15 and 16.

10. Admits upon information and belief the allegations contained in paragraph 17.

11. Admits the allegations contained in paragraphs 18 and 19.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

13. Admits the allegations contained in paragraphs 21, 22, 23 and 24.

14. Denies the allegations contained in paragraphs 25, 26, 27 and 28.

15. Admits the allegations contained in paragraph 29.

16. Denies the allegations contained in paragraph 30.

17. Admits the allegations contained in paragraph 31.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 32, 33 and 34.

19. Admits the allegations contained in paragraph 35.

20. Denies the allegations contained in paragraphs 36 and 37.

21. Admits the allegations contained in paragraph 38, and avers that Brownstein informed defendant Nissan (i) that he was preparing a report concerning defendant 3i Company/Information Interscience, Inc. ("3i") and (ii) that said report was for use by Brownstein's employer only.

22. Denies the allegations contained in paragraphs 39, 40, 41 and 42, except admits preparing a report and respectfully refers the Court to said report for a true and complete statement of its contents.

23. Denies the allegations contained in paragraphs 43 and 44.

24. Denies the allegations contained in paragraphs 45, 46 and 47 which refer or is intended to refer to defendant Brownstein, and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs 45, 46 and 47 which refer or are intended to refer to defendants other than Brownstein.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 48 and 49, except admits that at one time defendant Gerald Brodsky ("Brodsky") was president and chief stockholder of defendant 3i.

26. Admits the allegations contained in paragraphs 50 and 51.

27. Admits the allegations contained in paragraph 53, and avers Brownstein advised defendant Brodsky (i) that he was preparing a report concerning defendant 3i and (ii) that said report was for use by Brownstein's employer only.

28. Denies the allegations contained in paragraphs 52, 54, 55, 56, 57, 58, 59 and 60 which refer or are intended to refer to defendant Brownstein; denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs 54, 55, 56, 57, 58, 59 and 60 which refer or are intended to refer to defendants other than Brownstein; and respectfully refers the Court to the report referred to therein for a true and complete statement of its contents.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 61 and 62.

30. Admits the allegations contained in paragraphs 63 and 64.

31. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 65.

32. Admits the allegations contained in paragraphs 66 and 67.

33. Denies the allegations contained in paragraph 68.

34. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109 and 110.

35. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 111, except admits that defendant Main Lafrentz and Co. ("Main LaFrentz") are certified public accountants.

36. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 112, 113, 114, 115, 116, 117 and 118, except admits that defendant Main Lafrentz rendered an opinion on the consolidated financial statements of defendant 3i and subsidiaries for the fiscal year ended June 30, 1970 ("the 1970 3i financial statements"); and respectfully refers the Court to said opinion and financial statements, including the notes thereto, for a true and complete statement of their respective contents.

37. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 119, 120, 121, 122, 123, 124, 125 and 126.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 127 and 128, except respectfully refers the Court to the 1970 3i financial statements, including the notes thereto, for a true and complete statement of their contents.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 129 and 130.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 131, 132, 133 and 134, except respectfully refers the Court to the 1970 3i financial statements, including the notes thereto, and the opinion thereon for a true and complete statement of their respective contents.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148 and 149.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 150, except respectfully refers the Court to the 1970 3i financial statements, including the notes thereto, and the opinion thereon, for a true and complete statement of their respective contents.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 151.

44. Denies the allegations contained in paragraph 152 which refer or are intended to refer to defendant Brownstein, and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph 152 that refer or are intended to refer to defendants other than Brownstein, except admits upon information and belief that defendant 3i Company filed an annual report on Form 10-K for its fiscal year ending June 30, 1972 with the Securities and Exchange Commission, and respectfully refers the Court to said annual report for a true and complete statement of its contents.

Defendant Brownstein makes no response to Counts I, II, III, IV, and V of the amended complaint, set forth in paragraphs 153 through 172, which are asserted against defendants other than Brownstein.

AS TO ALLEGED COUNTS VI and VII

45. Denies the allegations contained in paragraphs 173, 174, 175, 176, 177, 178, 179 and 180 which refer or are intended to refer to defendant Brownstein, and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs 173, 174, 175, 176, 177, 178, 179 and 180 which refer or are intended to refer to defendants other than Brownstein.

SECOND DEFENSE

46. This Court lacks jurisdiction over the subject matter of Counts VI and VII of the amended complaint.

WHEREFORE, defendant Joel Brownstein demands judgment dismissing the amended complaint, together with his costs and disbursements.

Dated: New York, New York
September 5, 1973

SULLIVAN & CROMWELL

WILLIAM E. WILLIS
By_____
(A Member of the Firm)
Attorneys for Defendant
Joel Brownstein
48 Wall Street
New York, New York 10005
(212) 422-8100

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

ROBERT R. FELTON, :

Plaintiff, : No. 73 Civ. 2200 - DBB

-against- :

WALSTON AND CO., INC., et al., : ANSWER OF DEFENDANT MARINE MIDLAND

Defendants. : BANK-NEW YORK

- -x

Defendant Marine Midland Bank-New York ("Marine Midland"), by its attorneys, Sullivan & Cromwell, answering the amended complaint herein:

FIRST DEFENSE

1. Denies the allegations contained in paragraph 1, except admits that plaintiff purports to assert claims against defendants under the Securities Exchange Act of 1934, the Securities Act of 1933, "the rules and regulations of the Securities and Exchange Commission promulgated thereunder", the General Business Law of the State of New York, and common law principles.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2, except admits: (i) that some of the acts and transactions described in the amended complaint purportedly occurred within the Southern District of New York; (ii) that Marine Midland has branch banks located in various places in the City of New York; and (iii) that defendant Walston & Co., Inc. ("Walston") maintains brokerage offices within the Southern District of New York.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3 and 4.

4. Denies the allegations contained in paragraph 5, except admits that plaintiff purports to bring this action "individually and as a class action", and that plaintiff defines the purported class in said paragraph 5.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6.

6. Denies the allegations contained in paragraphs 7, 8, 9, 10 and 11.

7. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs 12 and 13.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 14, 15, 16, 17, 18, 19, 20, 21 and 22.

9. Admits the allegations contained in paragraphs 23 and 24.

10. Denies the allegations contained in paragraphs 25, 26, 27 and 28.

11. Admits the allegations contained in paragraph 29.

12. Denies the allegations contained in paragraph 30.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 31, 32, 33, 34, 35, 36, 37 and 38.

14. Denies the allegations contained in paragraphs 39, 40, 41 and 42, except admits the existence of a report prepared by Joel Brownstein, and respectfully refers the Court to said report for a true and complete statement of its contents.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43.

16. Denies the allegations contained in paragraph 44.

17. Denies the allegations contained in paragraphs 45, 46 and 47 which refers or is intended to refer to defendant Marine Midland, and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs 45, 46 and 47 which refer or are intended to refer to defendants other than Marine Midland.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 48, 49, 50, 51, 52 and 53.

19. Denies the allegations contained in paragraphs 54, 55, 56, 57, 58, 59 and 60 which refer or are intended to refer to defendant Marine Midland; denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs 54, 55, 56, 57, 58, 59 and 60 which refer or are intended to refer to defendants other than Marine Midland; and respectfully refers the Court to the report referred to therein for a true and complete statement of its contents.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109 and 110.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 111, except admits that defendant Main Lafrentz and Co. ("Main Lafrentz") are certified public accountants.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 112, 113, 114, 115, 116, 117 and 118, except admits that defendant Main Lafrentz rendered an opinion on the consolidated financial statements of defendant 3i Company/Information Intersciences, Inc. ("3i Company") and subsidiaries for the fiscal year ended June 30, 1970 ("the 1970 3i financial statements"); and respectfully refers the Court to said opinion and financial statements, including the notes thereto, for a true and complete statement of their respective contents.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 119, 120, 121, 122, 123, 124, 125 and 126.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 127 and 128, except respectfully refers the Court to the 1970 3i financial statements, including the notes thereto, for a true and complete statement of their contents.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 129 and 130.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 131, 132, 133 and 134, except respectfully refers the Court to the 1970 3i financial statements, including the notes thereto, and the opinion thereon for a true and complete statement of their respective contents.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148 and 149.

28. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 150, except respectfully refers the Court to the 1970 3i financial statements, including the notes thereto, and the opinion thereon, for a true and complete statement of their respective contents.

29. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 151.

30. Denies the allegations contained in paragraph 152 which refer or are intended to refer to defendant Marine Midland, and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph 152 that refer or are intended to refer to defendants other than Marine Midland, except admits upon information and belief that defendant 3i Company filed an annual report on Form 10-K for its fiscal year ending June 30,

1972 with the Securities and Exchange Commission, and respectfully refers the Court to said annual report for a true and complete statement of its contents.

Defendant Marine Midland makes no response to Counts I, II, III, IV, V and VI of the amended complaint, set forth in paragraphs 153 through 176, which are asserted against defendants other than Marine Midland.

AS TO ALLEGED COUNT VII

31. Denies the allegations contained in paragraphs 177, 178, 179 and 180 which refer or are intended to refer to defendant Marine Midland, and denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraphs 177, 178, 179 and 180 which refer or are intended to refer to defendants other than Marine Midland.

SECOND DEFENSE

32. This Court lacks jurisdiction over the subject matter of Count VII of the amended complaint.

WHEREFORE, defendant Marine Midland Bank-New York demands judgment dismissing the amended complaint, together with its costs and disbursements.

Dated: New York, New York
September 5, 1973

SULLIVAN & CROMWELL

By WILLIAM E. WILLIS
(A member of the firm)
Attorneys for Defendant
Marine Midland Bank-New York
48 Wall Street
New York, New York 10005
(212) 422-8100

STIPULATION AND ORDER WITHDRAWING MOTION BY JOEL BROWNSTEIN TO DISMISS COMPLAINT (Filed September 10, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON

Plaintiff

- against -

WALSTON AND CO., INC., et al.

Defendants

----------x

73 Civ. 2200-DBB

STIPULATION WITHDRAWING MOTION TO DISMISS

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for plaintiff and defendant Joel Brownstein, that the Motion to Dismiss the complaint against Joel Brownstein returnable September 10, 1973 is hereby withdrawn.

Dated: Mineola, New York
September 5, 1973

ROBERT R. FELTON
Plaintiff Pro Se

SULLIVAN & CROMWELL
Sullivan & Cromwell
Attorneys for Defendant
Brownstein

SO ORDERED: 9/10/73

DUDLEY B. BONSAL
U. S. D. J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC.

DEFENDANTS.

----------x

73 Civ. 2200-DBB

REPLY TO THE MOTION

STATE OF NEW YORK)
: ss.:
COUNTY OF NASSAU)

ROBERT R. FELTON, being duly sworn, deposes and says:

1. Robert R. Felton, a member of the bar of this Court, and plaintiff pro se, hereby submits this affidavit in reply to this instant motion for plaintiff's deposition upon oral examination.

2. Movant has carefully listed "all" correspondence relating to plaintiff's appearance for deposition, but for his own purposes, movant has failed to include a letter dated August 29, 1973 from Julius Winn of the firm of Leon, Weill and Mahony, wherein Mr. Winn stated he did "not intend to be bound by the examination taken by Sullivan and Cromwell" and further stated that he would not be "compelled to take an examination at an inconvenient time." I have annexed Mr. Winn's letter to my reply affidavit.

3. As I indicated in my letters to Sullivan and Cromwell of August 10, 1973 and August 28, 1973, which were included in the moving papers herein, I wish to be deposed since it is my sole intention to move this action along to a speedy conclusion. However, I respectfully request this Court to set a date requiring all attorneys to be present and finish at one time with my deposition.

4. To this end, I further request this Court to require movant to serve additional copies of this motion upon:

Shea, Gould, Climenko and Kramer, Esqs.
330 Madison Avenue, New York, NY, as attorneys for defendants Medische Referatan (Excerpta Medica) N. V. and Stichting Excerpta Medica (Excerpta Medica Foundation)

Kaye, Scholer, Fierman, Hays, and Handler, Esqs.
425 Park Avenue, New York, NY, as attorneys for defendant Main Lafrentg and Co.

Wherefore, I respectfully request that this Court require movant to serve copies of this motion upon the aforesaid attorneys for the respective defendants in order to avoid repeated depositions by plaintiff.

Robert R. Felton

ROBERT R. FELTON

Sworn to before me
this 10th day of September, 1973.

Leona D. MacFarlane

LEONA D. MacFARLANE
Notary Public, State of New York
No. 30-7649650
Qualified in Nassau County
Term Expires March 30, 1974

EXHIBIT ANNEXED TO FOREGOING AFFIDAVIT - LETTER FROM LEON, WEILL AND MAHONY TO ROBERT R. FELTON DATED AUGUST 29, 1973 102a

LEON, WEILL & MAHONY
COUNSELLORS AT LAW
261 MADISON AVENUE
NEW YORK, N.Y. 10016
MURRAY HILL 7-5707

CABLE ADDRESS
"WEILLEON" NEW YORK
RCA TELEX: 223360

EDWARD J. LEON
HAROLD WEILL
HAROLD OBSTLER
ABE SIEGEL
VITALIS L. CHALIF
ROBERT S. FRIEDMAN
BERNARD KAHN
JULIUS WINN
JEROME LIPPER
MARVIN N. ROSEN

SHERMAN EWING
DONALD G. COHEN
CYRUS GILBERT ABBE
BARBARA G. KAPLAN
MICHAEL A. KASSOVER

FRANCIS A. MAHONY
COUNSEL

August 29, 1973

Richard R. Felton, Esq.
42 Third Avenue
Mineola, New York 11501

Re: Felton v. Walston and Co., Inc., et als.

Dear Mr. Felton:

I have a copy of your letter of August 28, 1973 addressed to Sullivan and Cromwell with respect to the above entitled matter.

While it is indeed commendable that you are seeking a speedy conclusion to this matter, I cannot be bound by the deposition to be taken by Sullivan and Cromwell on September 5, 1973. So as the record is clear, I was invited to attend. That does not mean that I will be ready to examine you at that time. I may not attend and once again, I do not intend to be bound by the examination taken by Sullivan and Cromwell.

I might also state that I want to be in a position to prosecute my client's action at my convenience and not at yours. I will, of course, cooperate where I can, but I will not be placed in the position at this time to prejudice my client's right by being compelled to take an examination at an inconvenient time.

Very truly yours,

LEON, WEILL & MAHONY

Julius Winn

JW/ed
cc: Richard W. Lyon, Esq. of Breed, Abbott and Morgan

Richard Lyon, Esq. of Sullivan and Cromwell

ANSWER OF STICHTING EXCERPTA MEDICA TO AMENDED COMPLAINT
(Filed September 13, 1973)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.

Defendants.

73 Civ. 2200 (DDB)

ANSWER

Defendant STICHTING EXCERPTA MEDICA ("Excerpta Medica Foundation"), by its attorneys, SHEA GOULD CLIMENKO & KRAMER, for its answer to the Amended Complaint:

1. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "1" through "54".

2. Answering paragraph "55", it denies that the "data bank license was worthless to defendant 3I Co.", and alleges that it is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said paragraph "55".

3. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "56" through "106".

4. Answering paragraph "107", it admits that on or about September 19, 1969, 3I Company entered into an agreement with Medische Referatan (Excerpta Medica) N.V., Infonet (Excerpta Medica - Rescona) N.V., and Eltrac (Infonet) N.V. and respectfully refers to said agreement for a correct and complete statement of its terms and provisions; except as herein admitted it denies the allegations in paragraph "107".

5. Denies the allegations in paragraph "108".

6. Admits the allegations in paragraph "109"; and, further answering said paragraph, it alleges that Stichting Excerpta Medica (Excerpta Medica Foundation) is a non-profit corporation.

7. Answering paragraph "110", it respectfully refers to the agreement dated September 19, 1969 for a complete and correct statement of its terms and provi ions and except as herein admitted, it denies the allegations therein.

8. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "111" through "115".

9. Answering paragraph "116", it respectfully refers to said "Note 1" for a correct and complete statement of its terms and provisions, and, except as herein admitted, it denies the allegations therein.

10. Answering paragraph "117" it refers to said balance sheet of defendant 3I Co. for a complete and correct statement of its terms and provisions; except as herein admitted, it denies knowledge or information sufficient to form a belief as to the truth of the allegations in said paragraph.

11. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph "118".

12. Answering paragraph "119", it refers to the agreement of September 19, 1969 for a complete and correct statement of the terms and provisions thereof; except as herein admitted, it denies the allegations in said paragraph.

13. Answering paragraph "120" it refers to the agreement of September 19, 1969 and said "Note" for a complete and correct statement of their terms and provisions; except as herein admitted, it denies the allegations in said paragraph.

14. Answering paragraph "121", it admits that the shares of 3I Co. received pursuant to the agreement of September 19, 1969 were never repurchased by defendant 3I Co., and, except as herein admitted, it denies knowledge or information sufficient to form a belief as to the truth of the allegations in said paragraph

15. Admits the allegations in paragraph "122".

16. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "123" through "128".

17. It denies the allegations in paragraph "129" and "130".

18. Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "131" through "134".

19. Answering paragraph "135", it admits the allegations therein; and, further answering said paragraph it alleges that its demand was made for payment of the monies due under the agreement of September 19, 1969 and that payment was not made by defendant 3I Co.

20. Answering paragraph "136" it alleges that request was made that defendant 3I Co. register the shares which obtained under the agreement of September 19, 1969 but that said registration was refused; except as herein admitted it denies the allega-

tions in said paragraph.

21. Denies the allegations in paragraph "137".

22. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "138".

23. Answering paragraph "139", it denies that the data bank license was worthless to defendant 3I Co. and, except as herein admitted, it denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph.

24. Answering paragraph "140", it admits that Peter Warren was for a period of time an employee of certain of the defendant companies; except as herein admitted it denys the allegations in said paragraph.

25. Answering paragraph "141", it refers to the agreement of September 19, 1969 for a complete and correct statement of its terms and provisions and, except as herein admitted it denies the allegations in said paragraph.

26. Answering paragraph "142", it admits that Peter Warren was for a period of time a director of defendant 3I Co.

27. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "143" through "152".

28. Denies the allegations contained in paragraphs "153" through "156".

29. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "157" through "160".

30. Answering paragraph "161", it alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in said paragraph, except it denies it made any non-disclosures or misrepresentations.

31. Denies the allegations contained in paragraphs "162" through "164".

32. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "165" through "180".

FIRST DEFENSE

33. The complaint fails to state a claim against defendant STICHTING EXCERPTA MEDICA (Excerpta Medica Foundation) upon which relief can be granted.

WHEREFORE, defendant STICHTING EXCERPTA MEDICA (Excerpta Medica Foundation) requests judgment dismissing the complaint upon its merits, together with the costs and disbursements in this action.

SHEA GOULD CLIMENKO & KRAMER

By: (Signed)
Bruce A. Hecker (a Partner)
Attorneys for Defendant Stichting Excerpta Medica (Excerpta Medica Foundation)
330 Madison Avenue
New York, New York 10017
(212) 661-3200

ANSWER OF DEFENDANTS WALSTON AND CO. AND JAMES NISSAN
(Filed September 11, 1973)
TO AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ROBERT R. FELTON, : 73 Civ. 2200 (DBB)

Plaintiff, :

-against- : ANSWER OF DEFENDANTS WALSTON & CO., INC. and JAMES NISSAN

WALSTON AND CO., INC., et al., :

Defendants. :

- x

Defendants Walston & Co., Inc., whose name has been changed to duPont Walston Incorporated ("Walston") and James Nissan ("Nissan"), by their attorneys, Breed, Abbott & Morgan, for their answer to the amended complaint herein:

1. Deny each and every allegation contained in paragraphs 1, 4, 5, 7, 8, 9, 10, 11, 33, 45, 46, 47, 61, 173, 174, 175, and 176.

2. Deny each and every allegation contained in paragraphs 2, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24, except admit that 3I Co./Information Interscience, Inc. ("3I") is a corporation whose common stock was publicly traded "over the counter" by or through brokerage firms, that 3I filed certain reports with the SEC, that Walston was and is a Delaware corporation authorized to transact business in New York State engaged in a general securities business with principal offices in the City, County and State of New York, that Walston from time to time acquired as a dealer securities of 3I and from time to time executed as broker transactions for customers in securities of 3I, that Nissan is a registered representative

licensed to purchase and sell securities and was employed by Walston at offices in New York City, and that Marine Midland Bank has branches throughout New York City and a fiduciary trust department.

3. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraphs 3, 6, 25, 26, 27, 28, 30, 36, 37, 38, 43, 44, 51, 52, 53, 54, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 151, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, and 172.

4. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraph 12, except admit that plaintiff purchased and sold 3I securities through Walston.

5. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraphs 29, 39, 40, 41, 42, 55, 56, 57, 58, 59, and 60, except admit that a report was prepared and refer to said report with respect to the content thereof.

6. Admit the allegations contained in paragraphs 31 and 50.

7. Deny each and every allegation contained in

paragraphs 32, 34, and 62, except admit that Nissan was and is a shareholder of 3I, that Nissan loaned money to 3I pursuant to a written agreement, to which reference is made with respect to the content thereof, and that Nissan exercised certain conversion rights in connection therewith.

8. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraph 35, except admit that Brownstein discussed 3I with Nissan.

9. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraphs 48 and 49, except admit that Brodsky was president and major stockholder of 3I.

10. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraphs 63, 64, 65, and 66, except admit that Nissan was acquainted with Brodsky and Brownstein, that Nissan received a copy of a report prepared by Brownstein, and that Nissan discussed 3I with Brownstein.

11. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraphs 111, 112, 113, 114, 115, 116, 117, 118, 127, 128, 131, 132, 133, 134, and 150, except admit that Main Lafrentz and Co. ("Lafrentz") are certified public accountants and that Lafrentz rendered an opinion on the consolidated financial statements of 3I and subsidiaries for the fiscal year ended June 30, 1970, and refer to said opinion and financial state-

ments, including the notes thereto, with respect to the content thereof.

12. Deny each and every allegation contained in paragraph 152, except deny knowledge or information sufficient to form a belief with respect to said allegations insofar as they refer or are intended to refer only to other defendants, and except refer to the annual report of 3I for fiscal 1972, filed on Form 10-K, with respect to the content thereof.

13. Deny each and every allegation contained in paragraphs 177, 178, 179, and 180, except deny knowledge or information sufficient to form a belief with respect to said allegations insofar as they refer or are intended to refer only to other defendants.

FIRST DEFENSE

14. This action does not meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and hence may not be maintained as a class action.

SECOND DEFENSE

15. The amended complaint fails to state a claim against these defendants upon which relief can be granted.

THIRD DEFENSE

16. The claims asserted in the amended complaint are barred by laches and by the applicable statute of limitations.

FOURTH DEFENSE

17. Plaintiff, by his actions and conduct in

connection with his transactions in the securities of 3I, has waived the claims asserted in the amended complaint and is estopped and otherwise barred from any recovery on the claims asserted in the amended complaint.

Dated: New York, N.Y.
September 10, 1973

BREED, ABBOTT & MORGAN

By Thomas W. Kelly
A Member of the Firm

Attorneys for Defendants
Walston & Co., Inc. and
James Nissan
1 Chase Manhattan Plaza
New York, N.Y. 10005
(212) 944-4800

NOTICE OF MOTION BY PLAINTIFF UNDER RULE 23(c) (1)
(Filed September 12, 1973)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants

----------x

73 Civ. 2200-DBB

NOTICE OF MOTION UNDER RULE 23 (c) (1)

CLASS ACTION

S I R S :

PLEASE TAKE NOTICE that, upon the annexed affidavit of Robert R. Felton, and upon the pleadings and proceedings hitherto had herein, the undersigned will move this Court on October 15, 1973, before Honorable Dudley B. Bonsal, United States Court House, Foley Square, New York, New York at 9:30 o'clock A.M. or as soon thereafter as counsel can be heard, for an order pursuant to Rule 23 (c) (1) of the Federal Rules of Civil Procedure (1) determining that this action be maintained as a class action, (2) setting forth the requisite notice, and (3) for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that any papers submitted in opposition to this motion must be served at least ten days prior to the return date hereof.

Dated: Mineola, New York
September 11, 1973

Yours, etc.,

Robert R. Felton
Plaintiff, Pro se
42 Third Avenue
Mineola, NY 11501

TO:

LEON, WEILL AND MAHONY
Attorneys for Defendant 3 I Company
261 Madison Avenue, New York, NY 10016

SULLIVAN AND CROMWELL
Attorneys for Defendants Marine Midland and Brownstein
48 Wall Street
New York, NY 10005

BREED, ABBOTT AND MORGAN
Attorneys for Defendants Walston and Nissan
1 Chase Manhattan Plaza
New York, NY 10005

SHEA, GOULD, CLIMENKO AND KRAMER
Attorneys for Defendants Medische Referatan,
and Stichting Excerpta Medica,
330 Madison Avenue, New York, NY 10017

KAYE, SCHOLER, FIERMAN, HAYS AND HANDLER
Attorneys for Defendant Main Lafrentz and Co.
425 Park Avenue, New York, NY 10022

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

73 Civ. 2200-DBB

AFFIDAVIT
CLASS ACTION

----------x

STATE OF NEW YORK)
: SS.:
COUNTY OF NASSAU)

ROBERT R. FELTON, being duly sworn, deposes and says, upon information and belief:

I am a member of the bar of this Court and I am the plaintiff herein. This affidavit is submitted in support of plaintiff's motion to have this action declared a class action pursuant to Rule 23 (c) (1) of the Federal Rules of Civil Procedure.

PRELIMINARY STATEMENT

Plaintiff instituted this action individually and as a class action on behalf of a class, consisting of those persons and business organizations who purchased securities of defendant 3 I Co./Information Interscience, Inc. (hereafter referred to as "3 I Co.") and were damaged by the various acts of the said defendants.

THE PARTIES

Plaintiff has been both a purchaser and a seller of Common Stock, Class A, par value $ .10 per share, issued by

defendant 3 I Co. and is at present a holder of 2,000 shares.

Walston and Co., Inc. is a Delaware Corporation, licensed in New York as a stock brokerage firm and in particular "making a market" in the securities of 3 I Co.

James Nissan is a registered representative and an officer and/or employee by Walston and Co., Inc. James Nissan was also personally a purchaser and seller of 3 I Co. securities and a creditor of 3 I Co.

Joel Brownstein is a security analyst employed in the Marine Midland Bank System. As part of his employment, Joel Brownstein prepared and distributed a financial report on 3 I. Joel Brownstein discussed the finances of 3 I Co. with James Nissan and Gerald Brodsky and told them that he was preparing this report.

Gerald L. Brodsky was the chief officer and Director of 3 I Co. until the termination of his employment on December 20, 1971. Gerald L. Brodsky was the major stockholder in 3 I Co.

Maurice Brodsky was the brother of Gerald L. Brodsky, a stockholder and warrantholder of 3 I Co. securities and a co-guarantor of a 3 I Co. bank loan. Maurice Brodsky was also the President and a substantial stockholder in American Micromation Industries, Inc., a worthless company purchased by 3 I Co. for $622,500.00.

Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher on June 30, 1971 were officers and/or directors and the major shareholders of two (2) worthless corporations, Information Company of America, I.C.A. and Information Corporation

of America which were purchased by 3 I Co. for $3,053,857.00. On or about September 1, 1971, Arthur W. Elias became President and a Director of 3 I Co., Marvin S. Riesenbach became Vice President, Treasurer, and a Director of 3 I Co. and Marvin Schiller and Irving H. Sher became Vice Presidents of 3 I Co.

On September 19, 1969, Excerpta Medica Foundation, Stichting Excerpta Medica (Excerpta Medica Foundation), Medische Referatan (Excerpta Medica) N.V., Infonet (Excerpta Medica - Rescona) N.V., Eltrac (Infonet) N.V., Netherland Corporations, entered into an agreement with 3 I Co. pursuant to the laws of New York, for a worthless data bank license, used by 3 I Co. to materially inflate its balance sheet assets.

Peter Warren was an employee of Excerpta Medica designated as its attorney-in-fact and agent under the aforesaid agreement. Peter Warren became a director of 3 I Co.

Fred Von Eugen was a business broker who participated in the aforesaid data bank license agreement.

Main Lafrentz and Co. were the auditors who certified the financial statements of 3 I Co. for fiscal year ended June 30, 1970.

S. Kim Kessler and Geraldine Kessler were the major shareholders in Scientific Literature Consultants, Inc. which was purchased by 3 I Co. and merged into a 3 I Co. subsidiary, Scientific Literature Corporation. S. Kim Kessler and Geraldine Kessler were then employed by this subsidiary of 3 I Co.

THE UNDERLYING FACTS

The amended complaint sets forth the relevant courses of conduct and violations of law. No purpose would be served by reiterating in detail the facts underlying these events.

All that need be emphasized here, for purposes of class determination, is that the various actions of these defendants caused plaintiff and the class to purchase the securities of 3 I Co. at inflated prices and to sustain substantial losses thereby.

THE CLASS

The facts with respect to the class are simple and particularly suitable for the application of Rule 23. Plaintiff instituted this action on behalf of himself and representatively on behalf of all persons who purchased 3 I Co. securities and sustained a loss. Plaintiff estimates that the class is in excess of 8,000 members. Plaintiff's interrogatories and request for documents served shortly after the amended complaint seek information which should describe the number and identity of class members and the extent of their holdings.

THE PROPRIETY OF A CLASS ACTION HEREIN

Plaintiff submits that this case is a classic example of the purpose for which Rule 23 was amended in 1966. The "corporate therapeutics" involved in private shareholders' actions, referred to by the Supreme Court in Mills v. Electric Auto-Lite Co., 396 US 375, 396 (1970), clearly would be served by a determination that this suit shall henceforth be maintained as a class action. All Rule 23 requirements have been met. Thus, taking each condition of Rule 23(a) separately:

> "...(1) the class is so numerous that joinder of all members is impracticable..."

As stated, plaintiff does not know the exact number or identity of the members of the class. This information is in the exclusive knowledge or control of defendants. There is, however, no doubt that the number of purchasers are so numerous so as to [illegible] of all members of the class impracticable. On the

other hand, the class is not so large so as to make the action unmanageable. Mailed notice can be easily accomplished here.

> "...(2) there are questions of law or fact common to the class..."

The legal and factual questions concerning defendants' liability to members of the class are not only common in some respects -- they are identical in most respects. In summary, the common questions relate primarily to a showing that the corporate financial statements, the Brownstein report, the Excerpta Medica agreement and Nissan's statements were false and misleading, and that the various purchases of worthless companies were not negotiated at "arms-length" and that the defendants have liability therefor. The fact that each member of the class may ultimately have to prove his individual damages has been uniformly held to be no bar to the maintenance of a class action.

In short, plaintiffs see no relevant liability issue in the case that is not common to the entire class. Furthermore, Rule 23 only requires the Court to find "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members." There can be no doubt that such is the case in the circumstances here.

> "...(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class..."

This condition is interrelated to the condition imposed by Rule 23(a) (2), supra, and for the reasons stated above, it is evident that each of the plaintiff's claims are typical of the claims of the other members of the class. The common issues "predominate" and typicality of claims and defenses is clear.

"...(4) the representative parties will fairly and adequately protect the interests of the class..."

The extent of the plaintiff's holdings of 3 I Co. common stock assures that the action will be vigorously prosecuted and that the like interests of the other members of the class will thereby be protected.

It is also submitted that plaintiff is qualified and experienced. Plaintiff has been a member of the bar of this Court for over fifteen (15) years and has extensive experience in litigation.

In sum, it is most respectfully suggested to this Court that plaintiff, because of his stake in the matter, and because of his experience, will fairly and adequately protect the interests of the class and assure the vigorous prosecution of the action.

In addition to the foregoing conditions of Rule 23(a), the Court must also find that the case falls under one of the subdivisions of Rule 23(b) before the suit may be maintained as a class action. Here again, it is submitted that the necessary requirements are present and have been met.

Thus: "(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class..."

The requirements of Rule 23(b) (3), are also satisfied. Thus, the Court must find

"(3) ...that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions..."

There is little doubt that there are many members of the class who held or hold a relatively small amount of 3 I Co. common stock and whose individual claims, therefore, are too small to warrant their incurring the necessary expenses which would be required in the initiation and prosecution of individual actions seeking redress for the wrongs alleged in the complaint here. Of course, in accordance with Rule 23(c) (2), once the Court determines that the suit is to be maintained as a class action, any individual member of the class, if he desires, may enter an appearance in the action through his own counsel or opt out.

"...(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;..."

Plaintiff knows of no other action as yet instituted by or against any member of the class..

"...(C) the desirability or undesirability of concentrating the ligigation of the claims in the particular forum..."

The plaintiff and most of the key defendants maintain their principal places of business in New York. James Nissan, Walston and Co., Inc., Joel Brownstein, Marine Midland

Bank - New York are located in New York. Furthermore, most of the acts and transactions occurred within the Southern District of New York, and the securities of 3 I Co. were purchased and sold by brokerage within the Southern District of New York.

> "...(D) the difficulties likely to be encountered in the management of a class action."

Plaintiff sees no difficulties warranting denial of this motion.

In sum, for the foregoing reasons and in accordance with the authorities discussed in the accompanying memorandum of law, it is respectfully submitted that all prerequisites and conditions of Rule 23 have been met and that a class action determination herein will achieve economies of time, effort and expense, and will promote uniformity of decisions as to persons similarly situated.

WHEREFORE, your deponent respectfully requests that this Court enter an Order pursuant to F.R.C.P. Rule 23:

(1) determining that this suit is to be maintained as a class action; and

(2) setting forth the requisite notice.

Robert R. Felton

ROBERT R. FELTON

Sworn to before me this

11th day of September, 1973.

Leona D. MacFarlane

LEONA D. MacFARLANE
Notary Public, State of New York
No. 30-7643650
Qualified in Nassau County
Term Expires March 30, 1974

EXHIBIT ANNEXED TO MEMORANDUM IN OPPOSITION TO CLASS ACTION-
EXCERPTS FROM FELTON DEPOSITION

A I say this to you, that after I became acquainted with Professor Bromberg's work, I purchased the two volume set. I consider myself to be very conversant with Securities Fraud Law. I have also read Painter's book, and Professor Loss, and basically, I know what you are driving at, sir, as far as my qualifications for the class action.

I say this to you, as I said before when you were questioning my educational background, I consider myself a good student of whatever I get into. That's why I was an attorney before I was 21 years of age.

I have spent away from my practice now the last three months preparing myself for the Securities Fraud Laws that I am going to be faced with in this matter and in the Equity Funding matter.. I spend hundreds of hours reading, digesting, knowing and understanding, hoping to understand. What I have done in the last three months has been to spend my summer reading.

Two or three days or a week or two of PLI courses in my opinion is in no way comparable to the amount of work that I have spent learning Common Law Fraud, Statement of Torts, and 10B5, 17A and other associated laws and rules of the Securities and Exchange Commission.

Q I may have misunderstood you, but did you say

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for the last three months that you devoted all of your time to this subject?

A All of my time to the point where my practice of -- my other practice has been put aside. Prior to that time, now -- let's see -- let's go off the record.

Q What you say out loud I would prefer to be on the record. You can do your thinking privately.

A All right. For the last three months, and I would like to qualify the word "all" because I certainly have to spend time in court when I am called for calendar and trials and trial preparations, that is, but all of the necessary work in preparing those cases that I have come into my office and people who have contacted me over the summer I have put aside and just do enough work to move the cases along but not do that work which is necessary to prepare these cases to put before being placed on the calendar.

I don't want to have you feel that prior to the last three months there wasn't reading and studying of the Securities Laws. I just say for the last three months in particular, that is, I have devoted -- and I am going to qualify the word "all" to "the greater part," if not -- well, just the greater part of my time. And when I say "time," I am not necessarily referring to my office time.

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I am talking about time spent on weekends and also time spent in the early evening to the late hours.

Q When did you buy these two volumes of Bromberg's work on the Securities Laws?

A Within the last month. Prior to that I used the books at the Supreme Court Library. As a matter of fact, I had requested the librarian to allow me to take the books home with me.

Q Yes?

A And it was at that point that I decided to buy them myself.

Q You mentioned Loss; you said you have read Loss's work on the Securities Laws?

A I haven't read, I have referred to it.

Q What is the length of the longest trial that you have ever handled?

A Five days.

Q Five court days?

A Yes, sir.

Q Have you ever been appointed a class representative in any case?

A No.

Q Have you ever asked to be designated a class representative?

* * *

Q Can you tell us by looking at your records when you first discussed 3i with Mr. Nissan?

A Just before Four Seasons stopped trading.

Q When was this? Can you give us a date or a year?

A I don't know. I don't know. I imagine it was 1969.

Q When was your first purchase of 3i stock?

A July of '70.

Q July of '70?

A Yes.

Q How much in advance of that date did Mr. Nissan first talk to you about 3i?

A Months.

Q Was that on the telephone?

A Yes.

Q What did he tell you about 3i?

A I was concerned about Four Seasons, the fact that it was coming down. I purchased Four Seasons at $63 a hundred and I purchased an additional Four Seasons in April of '70, (Referring to documents.) approximately 42 and one half.

I believe Four Seasons stopped trading somewhere in the neighborhood of the 30's. Now, this is strictly from my memory because I'm not prepared -- just to answer your question, and I'm not prepared as far as my recollection

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But, in any event, our conversation was sometime on 3i -- now, my recollection and looking at the statement of the period ending 4/30/70, Exhibit 2, it was sometime after April 1 of '70.

What he said to me was, and this may have been after he stopped trading, he said that he thought perhaps when they resumed trading Four Seasons that it might open somewhere in the neighborhood of $15 or so.

He said that he -- if I could sell the Four Seasons, he would recommend my buying 3i Co.

Q What did you say?

A I said, "I hope that they resume trading in Four Seasons."

Q Did you ask him about what 3i was?

A Not at the time.

Q Did he tell you what it was?

A No.

Q He just mentioned 3i?

A Yes. He said, "I have another situation that I am watching, 3i Co. If you get the money in Four Seasons, we'll make it up to you on 3i Co."

Q This was sometime between April and July of 1970?

A Yes.

Q Was anything further said about 3i in this

first conversation?

A No.

Q When did you discuss it with him again?

A July of 1970.

Q Did you call him or did he call you?

A I believe I called him.

Q What was said in this conversation?

A "I would recommend that you buy 3i Co. It is a very good price."

Q That is what Mr. Nissan said to you?

A Yes.

Q What did you say?

A I said, "What is it trading at?" (Referring to document.) And he said, "Somewhere around $5 or a little less."

Q What else did he tell you?

A He said he expected some earnings improvement and he thought that the price was very good.

Q Did he tell you what the company did?

A No, not at that time.

Q Did you tell him to buy some for you?

A Yes, surely.

Q How much did you tell him to buy?

A 2,000 shares.

* * *

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Q Looking at Exhibits 3 and 4, I see that you purchased a total of two thousand shares on or about July 9, 1970?

A Repeat that question, please.

MR. WILLIS: Would you, please?

(Question read back.)

Q Looking at Exhibits 3 and 4, it appears that you purchased a total of two thousand shares on July 9, 1970; is that correct?

A Yes.

Q And these purchases were on the recommendation of Mr. Nissan?

A Yes, of course.

Q Did Mr. Nissan give you any written material concerning 3i at or before you made these purchases?

A No.

Q And I believe you testified that he didn't tell you what kind of business 3i was in?

A Not then, no.

Q Had you made any investigation yourself about 3i up until July 9, 1970?

A No.

Q Did there come a time that you made an additional purchase of 3i stock?

BORAK REPORTING 150 NASSAU ST.

A Yes.

Q After your initial purchase in July of 1970, when did you next have a transaction in the stock of the 31 Company?

A (Referring to documents.) On January 13, 1971.

Q Between July and January, 1971, did you have any further conversations with Mr. Nissan about the 31 Company?

A Yes.

Q How many conversations did you have?

A I recall one in particular in January of '71.

Q What was that conversation?

A The stock had moved forward from 4 and 3/4 to approximately $7 and in view of my past losses with him, I was a bit apprehensive. So I called him and asked him, that I thought I should sell the shares.

Q What did he say?

A He said to me that he had a customer, would I mind increasing the sale?

I told him I had to think about it for a while and I would call him back. I thought about it over lunch and called him back and said, asked him what he thought of the stock and he said, "Obviously, I am recommending it to somebody else at $7 and buying it

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for them. Draw your own conclusions."

And I did. I held on to the stock.

Q Up until January, 1971, had you received any writings or materials from Mr. Hissan concerning the 3i stock?

A Nothing.

Q Did you have any correspondence with him at all?

A Only these statements that were coming through monthly, showing my account.

Q Did you make any investigation yourself about 3i Company up until January, 1971?

A I don't believe so.

Q Did you --

A Except that I once in a while checked it to see how, you know, how it was doing.

Q Yes?

A And I was satisfied with the fact that it was moving forward from the 4 and 3/4 that I had paid for it until the ring that I was calling him at or on.

Q Did you have other conversations with Mr. Nissan during the period July, 1970 to January, 1971?

A Surely.

Q About 3i?

A Not particularly, but about the other stocks that I owned.

Q Do you recall any other conversations with Mr. Nissan up until January, 1971, concerning 3i?

A I don't recall.

Q All right.

A Execpt that in passing I would say, "It looks good, doesn't it?" And he would say, "Yes, don't you see how nice it is moving forward?" And I said, "Thank you, I'm very pleased."

Q Did you ask Mr. Nissan during this period what kind of business 3i was in?

A I might have because I somewhere along the line acquired the knowledge that they were in some kind of medical type of computer. They had medical type of computer information.

Q When did you acquire that information?

A Frankly, --

Q When did you acquire that information?

A It might have been about the time of January 13, 1971, when I purchased some more stock. (Referring to documents.)

Q What were the circumstances that caused you to purchase some more stock on January 13?

A Well, as I indicated, I had withdrawn my decision

BORAK REPORTING 150 NASSAU ST.

to sell in the early part of January and -- on January 13, 1971, I called him and we discussed 31 further and -- at that time, he said that he expected the stock to go to $15 and I asked him why. And he told me improving earnings. But beyond that, we didn't really go into any specifics.

Q Did you ask him any questions about 31?

A Did I ask him any questions?

Q Yes.

A No, because I was satisfied with the price as it was moving forward and at that time, I believe on January 13, he told me they were in the computer business and the -- specialized type of computer information regarding medical information.

Q Yes?

A And frankly speaking, I believed him. I really believed him and I was satisfied that it had moved forward from, as I say, 4 and 3/4 through 7 and up to 7 and 3/4 and I was sort of happy that I didn't sell at $7 and decided to follow his advice.

Q You told him to purchase some additional shares?

A Yes.

Q How many shares did you buy?

A (Referring to documents.) Another thousand shares.

Q. That brought your total holdings up to three

BORAK REPORTING 150 NASSAU ST.

thousand shares?

A Correct.

Q Of 3i, at that time?

A Correct, and I would like to tell you that I paid 7 and 3/4 for this thousand that I purchased on January 13, 1971.

Q When was the next conversation that you had with Mr. Nissan concerning 3i stock?

A A couple of weeks thereafter.

Q This would have been late January?

A Well, specifically, February 1st.

Q What did you say to him then?

A The stock at that time had doubled from the original price. It was up to 9 and 1/2.

Q On February 1st?

A About that time. That's what the price was then. Frankly, I got nervous. So I said, "I have three thousand shares of stock. It has now come from 4 and 3/4 up to 9 and 1/2. What should I do?"

Q What did he say?

A And he said, in his opinion, it still was going up to $15.

Q Yes?

A But, nevertheless, in view of my previous loss, I

BORAK REPORTING 150 NASSAU ST.

decided to be cautious in spite of his objections, and I sold a thousand shares on February 1st, 1971, at 9 and 1/2 dollars.

Q You earned a profit of about $5,000 on the first thousand shares; is that correct?

A I don't have the figures, but the difference between -- let's see. We can figure it out.

I would say talking in terms of $4400. Not in terms, excuse me, in the amount of $4400.

Q I noticed on one of the confirmations there is a reference to "volume discount." Did you become entitled to some at volume discount in your dealings with Walston?

A This is, in answer to this, I would say this: This is something that I am going to go into in my deposition and discovery of Walston and Mr. Nissan in view of the fact that Mr. Nissan worked for Walston, a company that was a dealer in the securities.

So I would like to reserve -- I'm ignorant of the volume discount and I would like to reserve that as part of my questioning of defendants Walston and Nissan.

Q The answer is, you do not know?

A No. I assume what it means in purchasing over a certain amount of money, perhaps there might be some kind of a lessening of the amount of commissions.

Q At the end of the day on February 1, you still held two thousand shares of 3i; is that correct?

A Yes.

Q When did you next have a conversation with Mr. Nissan about 3i stock?

A Approximately a week later.

Q What was the subject of that conversation?

A The remaining two thousand shares.

Q Did you ask him his advice?

A Well, the price had risen from 9 and 3/4 -- 9 and 1/2 to 12 and 1/8, which was a very substantial rise in a very short period of time. And considering again my previous losses plus the fact that this was such a great move in price from 4 and 3/4 to 12 and 1/8, approximately triple, I told him that I think -- I thought that I should sell the remaining two thousand shares.

Once again, he objected and said, "It's up to you." When I say "objected," I mean in this sense, that his opinion was the stock still was going higher. He still said, in my questioning him, he would see $15.

Q All right.

A Again -- but I sold it, in any event.

Q Again, up until this time, you had made no investigation of the stock other than what Mr. Nissan had told you?

SORAK REPORTING 150 NASSAU ST.

A No, because the stock was moving forward and -- I was in the position that I was in and I just -- it was just a question of not losing and protecting whatever the particular price was at that particular time.

Q Did you get any annual reports or public filings on behalf of 3i during this period of time?

A A later conversation between myself and Mr. Nissan covered this point. I just want to say this: I might have but if I did, I didn't take any notice of it. It might have been thrown out in my mail.

Q At the end of the day on February 9, 1971, you had no position in 3i?

A No.

Q When did you next have any discussions with Mr. Nissan concerning 3i?

A I believe on March 2, '71.

Q Did you call him or did he call you?

A I called him.

Q What was said in that conversation?

A Repeat the question, please.

Q What did you say to him and what did he say to you?

A No, the context. I'm sorry, I wasn't paying attention. Would you read back the questions before?

Q Your conversation on March 2, 1971, in that conversation did you call him or did he call you?

A I believe -- not. I believe I called him.

Q You asked me to go back two questions.

A No.

Q What did you say to him and what did he say to you, was my next question?

A Well, the jist of it was, I asked him about 3i Company.

Q Yes?

A And he said to me he still thought the stock would be $15. And he thought that I was premature -- mind you, I'm paraphrasing it, but basically that I was premature in selling at the price including the 12 and 1/8 that I purchased it and sold it at on 2/9/71.

Q What else did he tell you?

A It was a buy at that same price. So I said to him, "Isn't it peculiar that I should be paying for stock what I sold it at in view of the fact that I originally purchased the first purchase in July at 4 and 3/4?" And he said, "No, it's going higher. It's a buy." And I bought it.

Q How many shares did you buy?

A Three thousand shares and I paid, I might add, between 11 and 3/4 and $12 for the three thousand shares.

BORAK REPORTING 150 NASSAU ST.

Q I notice on certain of the confirmations, there is the notation "corrected confirmation." Do you notice that on some of the confirmations?

A Yes.

Q Do you know what brought the correction about?

A I would imagine that it must be a -- once again, now, this is not -- this is something we will reserve for the deposition of Walston and Nissan.

But perhaps it is possible there might have been a multiplication error or a commission error that was corrected.

Q The answer is you don't know; is that correct?

A No, that's correct.

Q When did you next have a transaction in 31?

A On March 16, 1971.

Q Did you talk to Mr. Nissan on that day?

A Yes.

Q What did you say to him?

MR. WINN: Excuse me. I have to leave. Will you note that I am leaving at this time?

See you tomorrow.

(Time noted, 2:30 p.m.)

A Repeat it, please.

Q Did you talk with Mr. Nissan on March 16,

1971?

A Yes.

Q And what did you say to him and what did he say to you?

A Once again, I would like to say this is basically paraphrased from my recollection based upon -- upon my recollection, without giving you the exact words because that is impossible to do at this time.

But what I said was, more or less, "We made it. We hit $15." And I said, "Sell my position."

Once again, he said, "It's up to you. I feel it's going even higher than that."

In view of the fact that I had purchased the stock at $12 and I had come from 4 and 3/4, I was nervous. So I said to him, "I will take your advice. I will only sell two thousand shares." And that's what I did on March 16, 1971, when I sold two thousand shares at 15 and 1/8.

Q Did Mr. Nissan advise you to sell two thousand?

A No. This was my own caution, the same caution I exercised all the way along the line in view of the fact that the stock was moving so fast and so well.

Q Which reduced your position then to one thousand shares?

BORAK REPORTING 150 NASSAU ST.

A Correct.

Q As of March 16?

A Yes.

Q When was your next transaction with Mr. Nissan or with 3i Company?

A On March 22.

Q Did you have a conversation with Mr. Nissan on that day?

A Yes.

Q What was said in that conversation?

A Well, the stock was still at the level of about 14 and 7/8, $15, and I asked him -- what he thought about my position.

Q Yes?

A And he said to me something to the effect that the stock is going much higher. And I said to him something to the effect of, "Well, all along you were looking for $15 in the stock and the stock came from 4 and 3/4 in July and it's now $15 and it's been here now for a while. What makes you think it's going to go any higher?"

And he said to me a few things. He said to me, "Firstly, did you look at the annual report?" And I said, "No." And he said, "Well, I will tell you, they bought," that is, 3i, "a big European data bank, and they

changed their whole capacities as far as their operations are concerned, and I think that that's one of the reasons why you ought to really take a look at it to see exactly why I think it's so good. I will send you another copy -- I will have a copy sent to you."

He also said to me, "One of the reasons why it's moving so well now is that -- they are on a fiscal year. So I'm in touch with their management." And he said, "This looks like the earnings are going to be pretty nice and in the black for '71. It looks pretty good."

He also told me that they were working on a couple of big acquisitions and that should really put them in a much better position all around.

This, as I say to you, is my recollection and everything was to the effect, paraphrased. Basically, that is just now my recall based upon what our conversation was.

Q Yes?

A So I asked him a little bit about the data bank, and he said, "Well, why don't you read about it in the annual report for '70." And this was -- and this was March 22, 1971.

Q Do you recall anything else that was said in that conversation?

BORAK REPORTING 150 NASSAU ST.

A Yes. I said, "Buy me two thousand shares," and I bought it, or he bought it for me, I should say, at 14 and 7/8 which is a little -- approximately a little less than the price that I had sold two thousand shares a week before that.

But in view of what he had told me, I felt that -- I should be in a bigger position in it.

Q Was anything else said in that conversation on March 22?

A There might have been, maybe, but I don't recall.

Q Did you get a copy of the annual report?

A Yes.

Q Did you read it?

A Yes. I didn't devour it. I read it.

Q Do you have a copy of it with you?

A I have -- I don't have the one he sent me. This is back in 1971. But I have some parts of it which I photostated when -- as part of my work product in preparation for this case.

Q What happened to the copy that you received from Mr. Nissan?

A I have no idea.

Q Was this the first piece of paper relating to 3i that ever came to your attention up to that time?

BORAK REPORTING 150 NASSAU ST.

A To my attention, yes.

Q What was the next transaction that you had in the stock of 3i?

A On April 13, 1971, in spite of what Mr. Nissan had said to me when I purchased the two thousand shares on March 22, '71, the stock wasn't really doing very much in the sense it hadn't made the moves. He had said it was going to go much higher and all that.

So once again, being cautious, I asked him or -- I asked him about the stock.

Q Yes?

A 3i, and also, I told him that I thought that perhaps having three thousand shares of it was a little too much for me with, you know, my portfolio -- in my portfolio.

Q Yes?

A So I told him that I wanted to sell it or some of it.

During that particular day, he said that the story was the same. That's more or less what he said. The acquisitions were still very much current and in the works and that the earnings looked very good for being in the black for 1971.

So I said then, "If that's the case, let's just sell one thousand shares at approximately the price that I paid

BORAK REPORTING 150 NASSAU ST.

for the last batch of the two thousand so that I won't be in a position where I could be hurt if for any reason there might be some break in the market or something like that."

And so he sold a thousand shares for me on April 13, 1971.

Q Which left you then with two thousand shares?

A Correct.

Q Had you read by April 13, 1971, the annual report which Mr. Nissan had sent to you?

A Yes.

Q You read it entirely?

A Well, you see, when you say "entirely," I read through it. I mean -- I just looked at it. I was interested in what he was talking about about the European data bank and I realized that they had -- I -- not realized, but I saw that they had shown on their balance sheet over a million dollars worth for the data bank license purchased at cost and the -- if I recall, at the time, whatever he said about the information, the thousands of journals or whatever it is, that they digested all that, it shounded exciting.

Q Had you read anything else about 3i up until April, 1971, except for the annual report of 31?

A I don't believe so.

Q Had you seen any mention of this company in any of the press, the Wall Street Journal or the New York Times, up until this time?

A No.

Q Up until --

A In fact, I was looking for some news of the acquisitions that he was talking about and it wasn't there.

Q Did he tell you what the acquisitions were or did he just indicate two acquisitions?

A He didn't say two; he said, "a couple of multi-million dollar acquisitions." Those were his words and I believe he said "a stock deal" for it.

Q He didn't tell you any particulars as to the proposed acquisitions, I take it?

A No, he just said, "A milti-million-dollar stock deal," which he said, "You know right now how important acquisitions are to a growing company." And I -- and I, you know, I -- I said, "Okay."

Q Up until April, 1971, had you discussed this stock, 3i Company, with anybody else other than Mr. Nissan?

A Yes.

Q With whom had you discussed it?

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BORAK REPORTING 150 NASSAU ST.

later, it might be -- I would prefer if we could -- if I could tell it to you as part and parcel of my stock transactions in 3i.

Q So would I. But up to the end of April, 1971, apart from Mr. Nissan and Mr. Falk and Mr. Einhorn, you had no discussions with anyone about 3i stock?

A No.

Q Beginning with May 1, 1971, when was your next conversation with anyone about 3i stock?

A (Referring to documents.) Sometime in June, '71.

Q Whom did you have the discussion with?

A Mr. Nissan.

Q Do you recall the date of that conversation?

A Yes, it was the date I purchased a thousand more shares at $20.

Q That would be June 7?

A Correct.

Q Tell us the substance of that conversation with Mr. Nissan.

A The stock had made a very big move to the area of $20.

Q Yes?

A I wanted to sell the stock that I had purchased on March 22, 1971 at 14 and 7/8.

BORAK REPORTING 150 NASSAU ST.

Q Let me interrupt. You held at that time two thousand shares; is that correct?

A Correct. This was dizzying to me. From 4 and 3/4 and 9, the stock had gone to 20. Now, mind you, my profit was really not that great because what I was doing was being induced all the time to go back again, more or less, for part or all of it at the price I paid. So, I decided that I wanted to get out of it.

Q What did you say to Mr. Nissan in that conversation on June 7?

A I said, "Now that we are in this level, don't you think I ought to sell?" And he said, "No." He said, "Buy." I said, "Why?" and he gave me a number of reasons.

Firstly, he said, "That big deal, the big acquisition is all set and almost ready for signing any day and an announcement. Now that we are getting close to the end of the year, management," and he mentioned Mr. Brodsky, "assures me that the earnings are going to be in the black for the year. They are also talking about another acquisition, but that may be a couple of months off. So by the time the news is absorbed on this, that should be another shot in the arm to push the stock higher. But," he said, "the best news of all is the fact that a major bank is writing up a -- very favorable report on the

BORAK REPORTING 150 NASSAU ST.

company. And as a matter of fact, it's buying up a lot of the stock, and once the news gets out about that, about the report and the fact that they are buying it so much, then once the news gets out, the stock is really going to take off."

So at that point, rather than selling, I bought another thousand at $20.

Q Have you told us the entire conversation, to the best that you can recall?

A That's basically the sum and substance of it.

Q Was this the first conversation that Mr. Nissan had mentioned Mr. Brodsky at?

A I can't be sure. If you recall, I mentioned it in March, where he talked about management. He might have said Brodsky and he might have said it in some intermediate conversation, but I heard about Mr. Brodsky several times after that from Mr. Nissan.

Q Did Mr. Nissan tell you that he had conversations personally with Mr. Brodsky?

A Later on, he said that he spoke to him a lot before the news came out on the earnings for the year.

Q But as of June 7, did you understand that he had frequent contact with Mr. Brodsky?

A He talked about management and he used the term

BORAK REPORTING 150 NASSAU ST.

BORAK REPORTING 150 NASSAU ST.

"Brodsky" interchangeably. So I wasn't sure at the time, to be perfectly honest with you, if Mr. Brodsky really was the -- the management or if he was a major stockholder. I just knew that Mr. Brodsky knew what was going on, according to the way Mr. Nissan phrased it.

Q Yes?

A So, I don't recall, as I say, specifically the name, but I do recall on June 7, I heard the name.

Q You mentioned that Nissan referred to a major bank. Did he identify what bank it was?

A No.

Q Did he tell you where the bank was located?

A No.

Q When was the next conversation which you had with anyone concerning 3i stock?

A That week.

Q Was that with Mr. Nissan again?

A No, Mr. Falk.

Q What did you say to Mr. Falk?

A It's not what I said to Mr. Falk, but it is what Mr. Falk said to me.

He said to me, "I just bought some of that stock."

Q Up until this time, Mr. Falk had been telling you that he had never heard of the stock; is that correct?

A I didn't really discuss it with him except a few times when I mentioned how the stock was going, but as far as I am concerned, he didn't know anything about the stock except, as I say, when Mr. Einhorn said it was Jim Nissan's stock or Nissan stock, one way or the other, but for the first time he had told me he had purchased it himself.

And I asked him, "Did you take it on my say so?" At that point, it was pretty high. I was worried for him. I was worried for myself.

He said, "No, some people in a bank, upstate, Rochester or Syracuse, were buying it a lot for the bank."

Q Did he identify what bank it was upstate?

A Yes.

Q What bank did he say it was?

A Marine Midland. I just want to add this at this point, I didn't at this point acknowledge to Mr. Falk about what Mr. Nissan said to me. I just -- was happy that he had confirmed what Mr. Nissan had said to me.

Q Therefore, mid-June is the earliest that you ever heard the name Marine Midland connected with 31; is that correct?

A Yes.

Q Have you given us the entire conversation that

BORAK REPORTING 150 NASSAU ST.

you had with Mr. Falk?

A About 31?

Q Yes.

A Basically, that was it because I didn't -- all I, as I said, basically, what he had told me, I said and he told me that in passing and I just noted in my mind and at the moment when he said it to me, I just felt this was confirmation of what Mr. Nissan had said to me and no more than that.

Q What was the next conversation that you had with anyone concerning 31?

A On June 21. (Referring to document.)

Q Was that with Mr. Nissan?

A Yes.

Q What was that conversation?

A The stock started to break down and it went down below $20 and I was upset and worried and I called him up. If I recall, now, this is -- quite sometime ago, but it had moved down rather rapidly from the 20's, breaking 20.

MR. R.W. LYON: Was that on the 21st of June?

THE WITNESS: Yes.

A And not knowing what the volume was or what was going on, I called him up and said, "Let me sell some of

BORAK REPORTING 150 NASSAU ST.

the stock. I'm very worried." And he said to me something to the effect that -- "Whatever you want to do; however, it's the same story. Nothing really has changed. Maybe some people are taking profit in the stock."

So I said, "Let's sell a thousand shares," or something to that effect, some amount like that. And I called him back in about half an hour and found we were only able to sell three hundred at 19 and 3/8.

And he said to me, do I want to lower my price. And I said, "What do you think?" And he said, "It's the same story. The earnings look good," and everything that he said when he induced me to buy it at 20 on June 7.

So I decided not to panic and take his advice and stay in it.

Q So that left you with 2700 shares?

A Yes.

Q Did he say anything else to you?

A Not that I recall, except that he, so to speak, he quieted me down and, by his saying the same story or more or less like that, I felt that perhaps some people were overreacting perhaps in taking profits as sometimes it happens in the market. So I decided to take his advice and stay with it.

Q When did you have your next conversation concerning 31 stock?

A In July.

Q With whom was that conversation?

A Mr. Falk.

Q What did Mr. Falk tell you?

A He showed me the report.

Q Which report?

A The Marine Midland Bank report.

Q Do you have a copy of that?

A No.

Q Did he give you a copy?

A I didn't ask him for one.

Q But he had it?

A Yes, he had it.

Q Did he show it to you?

A Yes, he came over and I recall vividly, I was sitting in my backyard on Friday evening.

Q Yes?

A And -- and he said, "Take a look at this report."

Q Did you take a look at it?

A Yes, I did.

Q Did you and he discuss the report?

A I just say this, I didn't analyze the report. I

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a copy of the Marine Midland report, did you?

A No, it just confirmed what Mr. Nissan had told me.

Q When was the next conversation that you had with anybody concerning 3i?

A On a fateful Monday when I found out that the stock had plunged from approximately $14 or $15 on Friday, I believe it's a Monday now, but I know there was an interval of time -- or even a day after, it plunged 7 points in one -- between a close, I believe it was a Friday to a Monday. But it very well might have been a -- it could have been any close of any day followed by my checking it, approximately 2:00 o'clock the following afternoon.

By the way, I just want to correct myself if I may. During the months of July and August and September, and when I say September, I think in September, yes, maybe even later, I don't have the dates. But for a couple of months thereafter, when I was in this position, the stock wasn't acting too well and I kept calling up Mr. Nissan and asking him about it. And he said, "The same story. We are waiting for the earnings. The deal has been put through already and it's been signed. The other acquisition is in the works."

This is when he started to tell me, "I'm in touch with Brodsky."

BORAK REPORTING 160 NASSAU ST.

BORAK REPORTING 150 NASSAU ST.

As a matter of fact, just before the precipitous plunge in the stock, for a week or two before, if my memory serves me correctly, he had told me Mr. Brodsky was in Europe or out of town.

Q When was this conversation?

A "I can't find out what the earnings are going to be because he is away and not around." And I started to get very uneasy, and he at the same time, he said everything was fine.

Q When was this conversation?

A Sometime in the fall of '71.

Q September?

A No, this is something that I do not have any record on.

Q The fall begins usually the latter part of September. When you say the fall, was it sometime after the 20th of September?

A I'm pretty sure, yes, and at the same time, I couldn't be completely sure. All I know is at sometime in the fall of '71 there was the fall of 31 as well.

Q And this conversation was before the stock took a precipitous fall?

A I was questioning the story. I knew that -- there was a report and I knew that there was -- well, I just

knew there was a report. So I knew there was some semblance of truth in what he said. That's what sort of allayed my fears. But what I couldn't understand is why the stock was acting so raggedly and so poorly. And I -- this is basically it.

Q Again, up until this time, you had made no investigation or inquiry with respect to this stock with anyone other than Mr. Nissan, your having read the annual report for 1970 and your having seen that July afternoon the Marine Midland report and having had casual conversations with Mr. Falk; is that correct?

A Yes.

Q That's the extent of the investigating that you had done about this stock up until that time?

A I had mentioned it to Mr. Einhorn and he said it was Mr. Nissan's stock.

I will tell you, with the way the stock was acting, if it hadn't been for the fact that I physically saw a report, I would have gotten out of the stock, but that so to speak kept me in it because I felt perhaps -- I had no way of knowing what the volume was. I don't believe there was any way of knowing what the volume was. And all I could see was the tape. I was just comforted by the fact of Mr. Nissan saying "Everything is going to be

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fine," and all that and everything --"once the earnings are coming out and people are nervous because the earnings are being delayed," and what have you.

Q When did you talk to Mr. Nissan next?

A I am telling you now the course of the conversation, but something that specifically comes to mind when I saw the stock was down to $7 --

Q Yes. Well, if I should tell you that the stock fell from 13 to roughly 7 --

A 14.

Q -- around the weekend of October 15 --

A I won't accept that.

Q You won't?

A No. I just say this to you, that the day that I found out that the stock fell precipitously, I am sure this is going from recollection now -- I don't know if it fell 7 points or 6 points or 5 points, all I know is my heart fell with the stock.

Q That day, you called up Mr. Nissan?

A Yes.

Q Whatever day that was?

A Yes.

Q What did you say to him?

A I said, "Did it drop immediately to this price?" I

BORAK REPORTING 150 NASSAU ST.

remember it so well, I was in Riverhead that day, Supreme Court of Suffolk, preparing to try a case, and in the lunch break, I went to a stock brokerage house in the neighborhood and I found out that way.

And I immediately called him up and he said something to the effect of, "Well, I think," he said, "it dropped first to around $11." And I said, "Why didn't you call me?" And he said, "I didn't know who to call first," and if he called anyone in particular he would be favoring one customer to get out as opposed to others. He said he let us all find out about it on our own.

Q Was that the entire conversation?

MR. R.W. LYON: Could I have the last answer read back?

MR. WILLIS: Surely.

(Answer read back.)

Q Did you ask him what had happened?

A He said the earnings weren't too good.

Q Did he give you any particulars?

A I tell you, I don't remember too much more after that conversation. I was so upset.

Q Do you recall what you said to him?

A No.

Q Was he --

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ANSWER OF MAIN LAFRENTZ AND CO. TO AMENDED COMPLAINT 160a
(Filed September 24, 1973)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----------X

ROBERT R. FELTON,

Plaintiff,

73 Civ. 220 (DDB)

-against-

ANSWER

WALSTON AND CO., INC., et al.

Defendants.

----------X

Defendant MAIN LAFRENTZ & CO., by KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, their attorneys, for their answer to the Amended Complaint alleges:

1. Deny knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained in paragraphs "1" through "106" inclusive, except admits the allegations of paragraph "13" thereof.

2. In answer to paragraph "107" thereof admit that on or about September 19, 1969 3I Company entered into an agreement with Medische Referatan (Excerpta Medica) N.V., Infonet (Excerpta Medica - Rescona) N.V., and Eltrac (Infonet) N.V. and respectfully refers to said agreement for a correct and complete statement of its terms and provisions; except as herein admitted it deny the allegations in paragraph "107".

3. Deny knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained in paragraphs "108" and "109" thereof.

4. In answer to paragraph "110" refers to the agreement dated September 19, 1969 for a complete and correct statement of its terms and provisions and except as herein

admitted deny the allegations contained therein.

5. Deny the allegations contained in paragraphs "112" and "113" thereof, except admit that the answering defendant examined the consolidated financial statements of 3I Company for the fiscal year ended June 30, 1970.

6. Upon information and belief deny the allegations contained in paragraphs "114" and "115" thereof except admit that the balance sheet of the defendant 3I Company for the fiscal year ended June 30, 1970 listed as an asset, "data bank licenses, at a cost (Note 1) $1,028,606.00" and $1,000,000 was the purchase cost of defendant Excerpta Medica's data bank license and allege that the balance sheet expressed a qualified opinion as follows: "Subject to the realization of carrying value of data bank license" which is contained in the Main Lafrentz report dated November 20, 1970.

7. Upon information and belief deny the allegations contained in paragraph "115" thereof except admit that if there was a realization on that asset the computation would have amounted to approximately 62% of the assets of the defendant 3I Company for the fiscal year 1970.

8. Deny the allegations in paragraph marked "117" thereof except admit that Note 6 of the notes to the consolidated financial statement read as follows for the year ended June 30, 1970:

> "Stock issued in connection with agreement with Excerpta Medica Foundation (note 1) $7,667 under caption, Common stock Class A and $842,333 under caption, Capital in excess of par value."

9. Deny the allegations contained in paragraph "118" thereof except admit that they read the agreement referred to therein.

10. In answer to paragraph "119" thereof refer to the agreement of September 19, 1969 for a complete and correct statement of the terms and provisions thereof and except as herein admitted deny allegations in said paragraph.

11. As to paragraph "120" thereof refer to the agreement of September 19, 1969 and said "note" for a complete and correct statement of the provisions thereof and except as herein admitted deny the allegations in said paragraph.

12. Deny the allegations contained in paragraph "121" thereof except admit that note 7 of the notes to the consolidated financial statements in Form 10-K for the year ended June 30, 1972 reads as follows:

> "The rights, previously granted to certain shareholders, to require the Company to re-purchase 46,666 shares of its Class A common stock, have terminated during the year ended June 30, 1972."

13. Deny the allegations contained in the paragraph marked "124" except admit that the balance sheet did not reflect a current liability of $150,000, but allege it was not appropriate to record the balance of $150,000 as a current liability since such liability was satisfied by the agreement dated June 15, 1970 for issuance of 30,000 shares of Class A stock which was reflected in the June 30, 1970 balance sheet as disclosed in the note 1 to the consolidated financial statement.

14. Deny the allegations contained in the paragraph marked "125" except admit that the $150,000 was satisfied by the agreement dated June 15, 1970 for the issuance of 30,000 shares of Class A stock, which was reflected in the June 30, 1970 balance sheet.

15. Deny the allegations contained in paragraph "127" thereof.

16. Deny the allegations contained in paragraph "128" thereof except admit that note 7 of the notes to the consolidated financial statement in Form 10-K of June 30, 1972 reads as follows:

> "The Company has entered into an agreement with a stockholder to issue 7,500 shares of its Class A common stock in exchange for cancellation of the stockholder's right to require the Company to repurchase or register the 30,000 shares."

17. Deny the allegations contained in paragraphs "129", "130", "131" and "132" thereof.

18. Deny the allegations contained in paragraph "133" thereof except admit that a balance sheet listed an asset purchased at cost as described in note 1 to the notes and the answering defendant rendered its opinion "subject to the realization of carrying value of data bank license."

19. Deny the allegations contained in paragraph "134".

20. Deny knowledge or information thereof sufficient to form a belief as to the truth of the allegations in paragraph "135" thereof.

21. Deny the allegations contained in paragraph "137" thereof.

22. Deny the allegations contained in paragraph "138" thereof except admit that the defendant Von Eugen received $150,000 in cash, and 30,000 shares valued at $5.00 per share, and thereafter received 7,500 shares of the Class A common stock in connection with his cancellation of registration rights which he had.

23. Deny the allegation contained in paragraph "139".

24. Deny knowledge or information thereof sufficient to form a belief as to the truth of the allegation contained in paragraph "140" thereof.

25. Deny knowledge or information thereof sufficient to form a belief as to the truth of the allegations contained in paragraphs "141", "142", "146" and "147".

26. Deny the allegation contained in paragraph "148" thereof except admit that after appropriate allocations there was a net earning loss of $1,055.00.

27. Deny the allegation contained in paragraph "149" thereof except admit that the 3I Company entered into a "Second Agreement" dated September 2, 1970 and refers to the agreement for its terms and provisions.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "151" through "160" inclusive.

29. Deny each and every allegation contained in paragraphs "161" through "164" inclusive thereof.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "165" through "180" inclusive.

WHEREFORE, the answering defendant herein demands

judgment dismissing the Amended Complaint herein, together with the costs and disbursements of this action.

Dated: September 21, 1973

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

By s/ Milton Kuven
A Member of the Firm
Attorneys for Defendant
Main Lafrentz & Co.
425 Park Avenue
New York, New York 10022

TO:

ROBERT R. FELTON
Plaintiff, Pro se
42 Third Avenue
Mineola, New York 11501

LEON, WEILL AND MAHONY
Attorneys for Defendant 3I Company
261 Madison Avenue
New York, New York 10016

SULLIVAN AND CROMWELL
Attorneys for Defendants Marine Midland and Brownstein
48 Wall Street
New York, New York 10005

BREED, ABBOTT AND MORGAN
Attorneys for Defendants Walston and Nissan
1 Chase Manhattan Plaza
New York, New York 10005

SHEA, GOULD, CLIMENKO AND KRAMER
Attorneys for Defendants Medische Referatan,
and Stichting Excerpta Medica
330 Madison Avenue
New York, New York 10017

ORDER DIRECTING PLAINTIFF TO APPEAR FOR DEPOSITION
(Filed September 27, 1973)

S. D. OF N. Y.

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

73 Civ. 2200-DBB

ORDER

Defendant Marine Midland Bank-New York having moved by Notice of Motion, dated September 4, 1973, for an order compelling the plaintiff to appear for deposition, and plaintiff having cross moved by Notice, dated September 10, 1973, for an order setting a date for defendant Joel Brownstein to appear for deposition, and plaintiff having further cross moved, by Notice, dated September 14, 1973, for an order compelling defendants Marine Midland Bank-New York and Joel Brownstein to produce specified documents, and the said motions having come on for hearing on September 24, 1973, it is

RECEIVED SEP 28 1973

ORDERED that plaintiff appear for deposition upon oral examination by defendant Marine Midland Bank-New York on October 9, 1973, at 10:00 A.M., in Room 1306, 48 Wall Street, New York, New York and produce at said deposition the documents described in the schedule annexed to the Notice of Deposition, dated July 3, 1973, as amended, and

that counsel for all other parties will be notified of said deposition and invited to attend and participate; and it is further

ORDERED that upon the completion of the said deposition of plaintiff, defendant Joel Brownstein will appear for deposition upon oral examination pursuant to plaintiff's Notice, dated August 8, 1973, at Room 1306, 48 Wall Street, New York, New York and will produce at said deposition for inspection and copying by plaintiff the documents specified in the schedule annexed to plaintiff's Notice, as amended, to the extent no objections to production of said documents have been filed by said defendant; and it is further

ORDERED that at 10:00 A.M. on October 16, 1973, defendant Marine Midland Bank-New York will produce for inspection and copying by plaintiff the documents specified in plaintiff's Notice, dated August 8, 1973, to the extent that no objections to the production of said documents have been filed by said defendant. The parties reserve the right to move the Court after the conclusion of the above depositions for an order compelling the production of those documents to which objection was taken and which have not been produced by defendants Brownstein and Marine Midland.

Dated: September 26, 1973

Richard B. Bard

U.S.D.J.

ANSWER OF 3 I CO. TO AMENDED COMPLAINT (Filed September 28, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al,

Defendants.

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CLASS ACTION
ANSWER

73 CIV 2200 DNE

Defendant, 3I Co./Information Interscience, Inc. (3 I Co.) by its attorneys, Leon, Weill & Mahony, for its answer to the complaint herein:

FIRST: Denies each and every allegation contained in paragraphs 1, 4, 5, 7 through 11 inclusive, 18, 48, 62, 69, 91, 106, 107, 120, 127, 128, 133, 136, 137, 139, 153 through 180, inclusive.

SECOND: Denies any knowledge or information sufficient to form a belief with respect to the allegations contained in paragraphs 3, 6, 12, 13, 14, 15, 16, 19, 20, 23 through 33 inclusive, 35 through 38 inclusive, 43 through 47 inclusive, 50 through 53 inclusive, 61, 63 through 68 inclusive, 73, 79, 109, 111, 118, 134, 138, 140, 152.

THIRD: Denies any knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraphs 2, 21, and 22 except admits that defendant 3I Co. is a publicly held corporation who filed reports with the S.E.C. and whose securities are traded "over the counter"; that defendant Walston maintains brokerage offices within the Southern District and that defendant Marine Midland has branches throughout the City of New York.

FOURTH: Denies any knowledge or information sufficient to form a belief to the allegations set forth in paragraphs 39 through 42

inclusive, 54 through 60 inclusive, 93 through 97 inclusive, 99 through 101 inclusive, 116, 117, 121, 131, 132, 143, 144, 145 and 150, and begs leave to refer to the reports and documents described therein for its contents.

FIFTH: Denies each and every allegation contained in paragraphs 70, 71, 72, 74 through 77 inclusive, except admits that Gerald Brodsky held stock possessing 38.4% of the voting power of 3I Co. which was not available for sale; that blocks of common stock class B shares were converted into common stock class A; that Brodsky resigned as Chairman of the Board as of December 20, 1971 and contributed 50,000 shares of common stock of Datapro Research Corporation and 25,000 shares of 3I Co. common stock class A to defendant 3I Co.

SIXTH: Denies any knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph 49 except admits that defendant Brodsky was a stockholder and referred to in reports as "parent" of defendant 3I Co.

SEVENTH: Denies any knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraphs 78, 84, 86, 87 and 88 except admits that defendant "Maurice" was president of American Micromation Inc. (AMI) on October 13, 1973; that 3I Co. acquired substantially all of the assets and certain specific liabilities of AMI in exchange for 123,671 shares of its common stock class A; that "Maurice" at that time of the acquisition of AMI held 45,000 shares thereof.

EIGHTH: Denies any knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraphs 89 and 92 except admits that on June 30, 1971 3I Co. purchased all of the

assets of Information Co. of America (I.C.A.) and Information Corporation of America with common stock class A of defendant 3I Co. valued at $3,053,857 and as a part of the negotiations defendant 3I Co. received auditors certificates and financial statistics concerning the earnings and financial condition of the entities involved.

NINTH: Denies each and every allegation set forth in paragraphs 102 and 105, except admits that defendant 3I Co. entered into the purchase agreement of June 30, 1971 and that defendants Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher became President, Vice Presidents and Directors respectively.

TENTH: Denies any knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph 114 except admits for the fiscal year ending June 30, 1973, 3I Company's balance sheet listed therein as an asset "data bank" licenses.

ELEVENTH: Admits the allegation contained in paragraph 115 and alleges that the word "asset" means balance sheet asset.

TWELFTH: Denies any knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph 123, through 126 inclusive, 129 and 130, but alleges that the $300,000 for Von Eugen consisted of $150,000 cash and 30,000 shares of 3I Co. stock which was issued in lieu of the $150,000 obligation and that the term "at cost" is an accounting term agreed to by Main La Frentz.

FOURTEENTH: Denies any knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph 147 except admits that S. Kim Kessler was employed by 3I Co. to manage Scientific Literature Corporation.

FIFTEENTH: Denies any knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraphs 148, 149 except admits that a second amendment was entered into.

FIRST DEFENSE

SIXTEENTH: This action does not meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and may not be maintained as a class action.

SECOND DEFENSE

SEVENTEENTH: The complaint fails to state a claim against 3I Co. upon which relief can be granted.

THIRD DEFENSE

EIGHTEENTH: The claims asserted in the complaint are barred by latches and by the applicable statute of limitations.

FOURTH DEFENSE

NINTEENTH: Plaintiff, by his actions in connection with his transaction in the securities of 3I Co. has waived the claims asserted in the complaint and is estopped and otherwise barred from any recovery on the claims asserted in the complaint.

Dated: New York, New York
September , 1973

LEON, WEILL & MAHONY

By _____
A member of the firm of
Leon, Weill & Mahony
Attorneys for Defendant 3I Co.
261 Madison Avenue
New York, New York 10016

NOTICE OF MOTION IN BEHALF OF MARINE MIDLAND AND JOEL BROWNSTEIN TO ADJOURN PLAINTIFF'S CLASS ACTION MOTION (Filed October 10, 1973)

OCT 10 1973
S. D. OF N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON & CO., INCORPORATED, et al,

Defendants.

No. 73-Civ.-2200-DBB

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon plaintiff's Notice of Motion, dated September 11, 1973, the Order of this Court dated September 26, 1973, and all prior proceedings herein, defendants Marine Midland Bank-New York and Joel Brownstein, by their undersigned counsel, will move this Court on October 15, 1973, before Honorable Dudley P. Bonsal, United State Court House, Foley Square, New York, New York, at 9:30 A.M. or as soon thereafter as counsel may be heard, for an order pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, adjourning the return date of plaintiff's motion that this action be maintained as a class action to November 12, 1973, on the ground that this Court cannot consider the requirements of Rules 23(a)(3) and 23 (a)(4) of the Federal Rules of Civil Procedure on said plaintiff's motion until completion of the deposition of plaintiff; and for such other and further relief as to the court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 9(c)(2) opposing affidavits in answering memoranda shall be served at least three days prior to the return date hereof.

DATED: New York, New York

October 5, 1973

SULLIVAN & CROMWELL

By _____
(A Member of the Firm)
Attorneys for Defendants,
Marine Midland Bank- New
York and Joel Brownstein,
48 Wall Street,
New York, N.Y. 10005
Telephone: (212)422-8100

TO:

ROBERT R. FELTON,
Plaintiff pro se
42 Third Avenue,
Mineola, New York 11501

BREED ABBOTT & MORGAN,
Attorneys for Defendants
James Nissan & Walston & Co., Inc.,
One Chase Manhattan Plaza,
New York, New York 10005

LEON WEILL & MAHONEY,
Attorneys for Defendant 3i Company, -
Information Intersciences, Inc.,
261 Madison Avenue,
New York, New York 10016

SHEA GOULD CLIMENKO & KRAMER,
Attorneys for Defendants
Medische Referatan, et al,
330 Madison Avenue,
New York, New York 10017

KAYE SCHOLER FIERMAN HAYS & HANDLER,
Attorneys for Defendant
Main Lafrantz & Co.,
425 Park Avenue,
New York, New York 10022

NOTICE OF MOTION BY PLAINTIFF FOR LEAVE TO SERVE AN AMENDED COMPLAINT (Filed November 5, 1973) 174a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON

Plaintiff

- against -

Index No. 73 Civ. 2200 DBB

WASLTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANK-NEW YORK, JOEL BROWNSTEIN, 3 I CO./INFORMATION INTER-SCIENCE, INC., GERALD L. BRODSKY, MAURICE BRODKSY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, EXCERPTA MEDICA FOUNDATION, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), INFONET (EXCERPTA MEDICA-RESCONA) N.V., ELTRAC (INFONET) N.V., MEDISCHE REFERATAN (EXCERPTA MEDICA) N.V., PETER WARREN, MAIN LAFRENTZ AND CO., FRED VON EUGEN, S.KIM KESSLER and GERALDINE KESSLER

Defendants

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S I R S :

PLEASE TAKE NOTICE, that upon annexed affidavit of Robert R. Felton, sworn to October 29, 1973, the summons, amended complaint and proposed amended complaint, a copy of which is attached at Exhibit A, and all prior proceedings herein, the undersigned will move this Court before the Honorable Dudley B. Bonsal in Room 1506 of the United States Court House, Foley Square, New York, New York on November 12, 1973 at 9:30 A.M., or as soon thereafter as counsel can be heard for an order pursuant to Rules 15(a) of the Federal Rules of Civil Procedure amending the complaint herein and permitting the service of the proposed amended

complaint on defendants herein, on the grounds that plaintiff has just learned of the existence of the additional facts stated therein and that justice so requires in order that all issues between the parties be fully litigated in this action, and for such other and further relief as this Court may deem just and proper.

Dated: Mineola, New York
October 29, 1973

Yours, etc.,

ROBERT R. FELTON
Plaintiff, pro se
42 Third Avenue
Mineola, New York 11501
516-746-5711

TO:

SHEA GOULD CLIMENKO & KRAMER
Attorneys for Defendants
Excerpta Medica
330 Madison Avenue
New York, New York 10017

LEON WEILL & MAHONEY, ESQS.
Attorneys for Defendant
3 I Co./Information Interscience, Inc.
261 Madison Avenue
New York, New York 10016

SULLIVAN & CROMWELL, ESQS.
Attorneys for Defendants
Marine Midland and Joel Brownstein
48 Wall Street
New York, New York 10005

BREED ABBOTT & MORGAN, ESQS.
Attorneys for Defendants
Walston and Co., Inc. and James Nissan
One Chase Manhattan Plaza
New York, New York

KAYE SCHOLER FIERMAN HAYS & HANDLER
Attorneys for Defendant
Main Lafrentz & Co.
425 Park Avenue
New York, New York 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT R. FELTON

Plaintiff

- against -

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANK - NEW YORK, JOEL BROWNSTEIN, 3 I CO./INFORMATION INTER-SCIENCE, INC., GERALD L. BRODSKY, MAURICE BRODSKY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, EXCERPTA MEDICA FOUN-DATION, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), INFONET (EXCERPTA MEDICA - RESCONA) N.V., ELTRAC (INFONET) N.V., MEDISCHE REFER-ATAN (EXCERPTA MEDICA) N.V., PETER WARREN, MAIN LAFRENTZ AND CO., FRED VON EUGEN, S. KIM KESSLER and GERALDINE KESSLER

Defendants

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STATE OF NEW YORK)
ss.:
COUNTY OF NASSAU)

ROBERT R. FELTON, being duly sworn, upon information and belief, deposes and says:

I submit this affidavit in support of this motion to amend the complaint herein and for permission to serve copies of the proposed amended complaint, attached hereto as Exhibit A.

Since the service of the original complaint, deposition has been taken of defendant Brownstein, and I have been deposed by defendants.

These depositions and certain of the documents therein produced have afforded new and additional facts which require that the complaint herein be amended accordingly.

In drafting the original complaint I did not have the information that the defendant Marine Midland - New York was only one of a number of subsidiary banks under their parent Marine Midland Banks, Inc. Furthermore only during Brownstein's deposition was I informed which bank employed Brownstein. The proposed amended complaint includes as defendants all subsidiaries as well as Marine Midland Banks, Inc., Brownstein's employer.

Mr. Brownstein testified as to his purchase of 3 I Co. stock and as to the purchasing of 3 I Co. stock by the Marine Midland Banks as recommended in his May 17, 1971 Report and his follow-up Bulletins, which Report and Bulletins were produced at his deposition.

Defendant Brownstein testified as to his "access" to 3 I Co. through his contacts with 3 I Co.'s President, Gerald Brodsky. Based on Brownstein's testimony, the proposed amended complaint alleges insider trading by defendants Brownstein and Marine Midland. Furthermore the proposed amended complaint alleges facts learned from Brownstein's aforesaid Report and Bulletins in the light of a letter from aforesaid Gerald Brodsky, which letter was also produced by Brownstein.

Defendant Nissan admitted in his Answer to the original Complaint as to his purchasing of 3 I Co. stock and his "access" to the aforesaid Gerald Brodsky, which "access" occurred during the course of Nissan's employment by Walston and Co., Inc., a dealer, in 3 I Co. stock. Based on Nissan's admissions as well as Brownstein's aforesaid testimony relating to Brownstein's conversations with Nissan, the proposed amended complaint alleges insider trading by defendants Nissan and Walston.

During the course of my deposition, I was caused to re-read certain SEC and 3 I Co. documents and I then learned that 30,000 shares of 3 I Co. stock were not issued to defendant Von Eugen prior to December 1, 1970 in connection with the data bank license transaction. The proposed amended complaint reflects this newly learned information in relation to 3 I Co.'s balance sheet for fiscal 1970 and defendant Lafrentz' Certificate (Report) thereon.

The proposed amended complaint has summarized all dates particularized in the original complaint as to the varied acts and actions of defendants herein in a time frame relationships to the damages sustained by myself and the class based on my deposition and the aforesaid testimony of defendant Brownstein.

The proposed amended complaint has also corrected certain stenographic and dictation errors.

WHEREFORE it is respectfully requested that this motion for an order amending the complaint herein and permitting the service of the proposed amended complaint be granted on the grounds that plaintiff has just learned of the existence of the additional facts stated herein and that justice so requires in order that all issues between the parties be fully litigated in this action, and for such other and further relief as this Court may deem just and proper.

Robert R. Felton

ROBERT R. FELTON

Sworn to before me

this 29th day of October, 1973

[redacted]

PROPOSED AMENDED COMPLAINT ANNEXED TO AFFIDAVIT OF ROBERT R. FELTON IN SUPPORT OF SAID MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON

Plaintiff

- against -

WALSTON AND CO., INC., JAMES NISSAN MARINE MIDLAND BANKS, INC., MARINE MIDLAND BANK - WESTERN, MARINE MIDLAND BANK - NEW YORK, MARINE MIDLAND BANK - ROCHESTER, MARINE MIDLAND BANK - CENTRAL, MARINE MIDLAND BANK - SOUTHERN, MARINE MIDLAND BANK OF SOUTHEASTERN NEW YORK, N.A., MARINE MIDLAND BANK - NORTHERN, MARINE MIDLAND BANK - EASTERN NATIONAL ASSOCIATION, MARINE MIDLAND BANK - CHAUTAQUA, NATIONAL ASSOCIATION, MARINE MIDLAND TINKER NATIONAL BANK, DREYFUS - MARINE MIDLAND, INC., JOEL BROWNSTEIN, 3 I CO./INFORMATION INTERSCIENCE, INC., GERALD L. BRODSKY, MAURICE BRODSKY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), MEDISCHE REFERATAN. (EXCERPTA MEDICA) N.V., INFONET (EXCERPTA MEDICA - RESCONA) N.V., ELTRAC (INFONET) N.V., PETER WARREN, MAIN LAFRENTZ AND CO., FRED VON EUGEN, S. KIM KESSLER and GERALDINE KESSLER

Defendants

PROPOSED

CLASS ACTION AMENDED COMPLAINT

Plaintiffs Demand Trial By Jury

73 Civ. 2200 (DBB)

Plaintiff, on behalf of himself and all other purchasers of the securities of defendant 3 I Co./Information Interscience, Inc., from December 10, 1970 to October 24, 1972 for his Amended Complaint, upon information and belief, complaining of the defendants herein, alleges:

JURISDICTION AND VENUE

1. The action is commenced under and jurisdiction is based on the Securities Act of 1933, 15 U.S.C.A. sections 77a-z,

The Securities Exchange Act of 1934, 15 U.S.C.A Sections 78a-hh, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles.

2. The acts and transactions complained of herein occurred in substantial part within the Southern District of New York and offerings of securities involved herein have been made to plaintiff and the class in the said Southern District. Defendant 3 I Co./Information Interscience, Inc. was and still is a publicly held business corporation with securities purchased and/or sold "over the counter" by brokerage concerns mainly within the Southern District of New York. Defendant Walston and Co., Inc. maintains brokerage offices within the Southern District and was a dealer and also acted as a broker in the securities of the said defendant 3 I Co./Information Interscience, Inc. Defendant James Nissan is employed as a registered representative by defendant Walston and Co., Inc. at its office at 77 Water Street, New York, New York. Defendants Marine Midland Banks, Inc. and Marine Midland Bank - New York maintains bank branches and/or offices throughout the City of New York.

3. The matter in controversy exceeds the sum of $10,000.00, exclusive of interests and costs. This action is not instituted to confer jurisdiction on this Court which it would not otherwise have.

4. Defendants carried out the acts and practices hereinafter set forth by the use, means and instrumentalities of interstate commerce and the mails.

5. Plaintiff brings this action individually and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a Class, consisting of those persons and business organizations who purchased securities of defendant 3 I Co./Information Interscience, Inc. (hereinafter referred to as defendant "3 I Co.") from December 10, 1970 to October 24, 1972 and were damaged by the acts hereinafter alleged.

6. Plaintiff estimates that the Class is in excess of 8,000 members and that joinder of all members is impractical.

7. Plaintiff is a knowledgeable person and plaintiff will insure adequate representation of the interests of all purchasers and holders of securities of defendant 3 I Co. His interests are coincidental with the interests of all members of the Class and he will fairly and adequately protect the interests of all absent members of the Class. He has no interests which are adverse to any members of the Class.

8. A Class action is superior to any other method available for fair and efficient adjudication of the controversy. It would be impossible to manage all possible actions or attempt to intervene into this action all damaged class members. Plaintiff knows of no difficulty likely to be encountered in management of this Class action.

9. Prosecution of separate actions by individual class members would create risk of inconsistent or varying adjudications with respect to various class members.

10. There are common questions of fact and law common to the Class.

11. The questions of law and fact common to the members of the Class predominate over any questions affecting individual members.

THE PARTIES AND THEIR ACTS

12. Plaintiff has been both a purchaser and a seller of Common Stock, Class A, par value $ .10 per share, issued by defendant 3 I Co. and is at present a holder of 2,000 shares.

13. Defendant James Nissan (hereinafter referred to as "Nissan") at all times herein mentioned was and still is a registered representative licensed to purchase and sell securities upon the exchanges and over the counter and was and still is an employee and/or officer of defendant Walston and Co., Inc.

14. Defendant Walston and Co., Inc. (hereinafter referred to as "Walston") at all times herein mentioned was and still is a foreign corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, and authorized to transact business in the State of New York, with its principal place of business in the City, County and State of New York, and is licensed and engaged as brokers and dealers in securities on the major exchanges and over the counter.

15. Defendant Walston at all time herein mentioned "made a market" and kept an inventory of the securities of defendant 3 I Co.

16. Defendant Walston at all times herein mentioned was either in a "long" or "short" position of the securities of defendant 3 I Co. and at the same time purchased and/or sold these securities to the plaintiff and certain members of the class.

17. Defendant 3 I Co./Information Interscience, Inc. (hereinafter referred to as "3 I Co.") was and still is a foreign corporation, duly organized and existing under and by virtue of the laws of the State of Pennsylvania with its principal place of business presently located in Houston, Texas.

18. Defendant 3 I Co. at all times herein mentioned issued securities known as Common Stock, Class A, par value $ .10 per share.

19. The aforesaid Common Stock of defendant 3 I Co., at all times herein mentioned, was sold to the public "over the counter" by certain designated dealers.

20. At all times herein mentioned, defendant Walston was one of the dealers who sold the aforesaid Common Stock of defendant 3 I Co. "over the counter" to the public.

21. Defendant 3 I Co. at all times herein mentioned, was a corporation registered with the Securities and Exchange Commission.

22. Defendant 3 I Co. at all times herein mentioned was a corporation filing periodic reports with the Securities and Exchange Commission.

23. Defendant Marine Midland Banks, Inc. and its subsidiaries Marine Midland Bank - Western, Marine Midland Bank - New York, Marine Midland Bank - Rochester, Marine Midland Bank - Central, Marine Midland Bank - Southern, Marine Midland Bank of

Southeastern New York, N.A., Marine Midland Bank - Northern, Marine Midland Bank - Eastern National Association, Marine Midland Bank - Chautaqua, National Association and Marine Midland Tinker National Bank (hereinafter referred to as "Marine Midland") at all times herein mentioned were and still are banks duly organized and existing under the laws of New York State.

24. Defendant Dreyfus - Marine Midland, Inc. (hereinafter referred to as "Dreyfus") at all times herein mentioned was a partially-owned subsidiary of defendant Marine Midland and at all times herein mentioned was and still is engaged in managing institutional accounts, pension funds and profit sharing funds.

25. Defendant Joel Brownstein (hereinafter referred to as "Brownstein") at all times herein mentioned was an employee of Marine Midland Banks, Inc.

26. Defendant Brownstein at all times herein mentioned was employed in the fiduciary trust department maintained by defendant Marine Midland Banks, Inc.

27. One of the duties of defendant Brownstein's aforesaid employment was the financial analysis and/or financial evaluation of certain business corporations.

28. Another of the duties of defendant Brownstein's aforesaid employment was the preparation of Reports concerning certain business corporations based on his aforesaid financial analysis and/or financial evaluation.

29. Defendant Brownstein prepared a Report concerning defendant 3 I Co. during the year 1971.

30. Defendants Brownstein and Marine Midland had the aforesaid Report typed and/or reproduced.

31. Defendant Brownstein was acquainted with defendant Nissan prior to defendant Brownstein's preparation of the aforesaid Report concerning defendant 3 I Co.

32. At all times herein mentioned, defendant Nissan was a shareholder in the securities of defendant 3 I Co.

33. At all times herein mentioned, defendant Nissan traded in the securities of defendant 3 I Co.

34. At all times herein mentioned, defendant Nissan acted as a broker and recommended the purchase of defendant 3 I Co.'s Common Stock.

35. Defendant Nissan was a creditor of defendant 3 I Co.

36. Defendant Brownstein discussed the finances of defendant 3 I Co. with defendant Nissan prior to defendant Brownstein's preparation of this aforesaid Report.

37. At the time of his aforesaid discussions with defendant Nissan, defendant Brownstein knew that defendant Nissan owned securities of defendant 3 I Co.

38. At the time of his aforesaid discussions with defendant Nissan, defendant Brownstein knew that Walston was a dealer and "made a market" in the securities of defendant 3 I Co.

39. Defendant Brownstein informed defendant Nissan that he was preparing the aforesaid Report concerning defendant 3 I Co.

40. Defendant Brownstein's aforesaid Report detailed the financial history and the then present financial condition of defendant 3 I Co.

41. Defendant Brownstein's aforesaid Report misleadingly and falsely detailed the financial terms of defendant 3 I Co.'s purchase of a data bank license from defendant Excerpta Medica.

42. Defendant Brownstein's aforesaid Report misleadingly stated the earnings per share of the defendant 3 I Co. for the fiscal year ended June 30, 1970 as a loss in the amount of $0.25, whereas defendant 3 I Co. had previously reported a loss of $0.34.

43. Defendant Brownstein's aforesaid Report misleadingly, grossly overstated the estimate of earnings per share of defendant 3 I Co. for fiscal year ended June 30, 1971 as a profit in the amount of $0.40 on revenues estimated at $2,124,000.00

44. Defendant 3 I Co. sustained a loss of earnings of $0.33 per share for the fiscal year ended June 30, 1971 on revenues of $1,052,657.00.

45. Defendant Brownstein's aforesaid Report misleadingly, grossly overstated the estimate of earnings per share of defendant 3 I Co. for the fiscal year ended June 30, 1972, as a profit in the amount of $1.00+.

46. Defendant 3 I Co. sustained a loss of earnings of $2.42 per share for the fiscal year ended June 30, 1972.

47. Defendant Brownstein's aforesaid Report misleadingly and falsely stated the "'71 P/E Ratio" of 3 I Co. as "32.5x."

48. Defendant Brownstein mailed, delivered and/or distributed copies of the aforesaid Report to other firms and/or individuals in the business and investment community.

49. Defendants Marine Midland and Dreyfus by their officers, employees, and/or agents mailed, delivered and/or

distributed copies of the aforesaid Report to other individuals, firms, banks and/or brokerage houses in the business and investment community.

50. Sometime prior to defendants Brownstein's and Marine Midland's publishing of the aforesaid Report, defendant Nissan advised and "tipped" to other firms, brokerage houses and individuals in the business and investment community of the advent of said Report and the purchasing of 3 I Co. common stock by defendant Marine Midland.

51. Defendant Nissan's aforesaid advising and tipping others of the aforesaid Report and the purchasing by defendant Marine Midland created a substantial increase in the market price of the securities of defendant 3 I Co.

52. Defendant Brownstein's aforesaid Report when published and/or distributed created a further substantial increase in the market price of the securities of defendant 3 I Co.

53. Defendants Marine Midland and Dreyfus, by their officers, employees, and/or agents "leaked" and/or "tipped" to other individuals, firms, banks and/or brokerage houses in the business and investment community of the purchases by defendant Marine Midland and Dreyfus of 3 I Co. common stock.

54. At all times herein mentioned defendant Marine Midland and Dreyfus purchased and/or traded in defendant 3 I Co. common stock.

55. Defendants Marine Midland and Dreyfus benefited by their aforesaid leaking and tipping of their aforesaid purchasing of 3 I Co. common stock and by their distribution, mailing and/or

delivering of the aforesaid Brownstein Report.

56. Defendants Walston and Nissan benefited from Nissan's tipping of defendant Marine Midland's purchasing of 3 I Co. common stock and the advent of the aforesaid Brownstein Report.

57. Defendant Gerald L. Brodsky (hereinafter referred to as "Brodsky") at all times herein mentioned and until December 20, 1971 was the chief Officer and Director of the defendant 3 I Co.

58. Defendant Brodsky at all times herein mentioned and until December 20, 1971 was the major stockholder in defendant 3 I Co. and was referred in the aforesaid annual 3 I Co. Reports to the Securities and Exchange Commission as the "parent" of the defendant 3 I Co.

59. Defendant Brownstein was acquainted with defendant Brodsky prior to defendant Brownstein's preparation of the aforesaid Report concerning defendant 3 I Co.

60. Defendant Brownstein discussed the finances of defendant 3 I Co. with defendant Brodsky prior to defendant Brownstein's preparation of this aforesaid Report.

61. At the time of his aforesaid discussions with defendant Brodsky, defendant Brownstein knew that defendant Brodsky was the major stockholder in defendant 3 I Co.

62. Defendant Brownstein advised defendant Brodsky that he was preparing the aforesaid Report concerning defendant 3 I Co.

63. Defendant Brownstein's aforesaid Report contained untrue statements of material facts and omitted to state material

facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, as to the financial terms of the defendant 3 I Co.'s purchase of the data bank license, the earnings per share of 3 I Co. for fiscal year ended June 30, 1970, the grossly overstated and unfounded estimated revenues and earnings per share of 3 I Co. for fiscal year ended June 30, 1971 and the '71 P/E ratio of 3 I Co. common stock.

64. Defendant Brownstein's aforesaid Report omitted the fact that defendant 3 I Co.'s chief officer and major stockholder defendant Brodsky, was annually converting large blocks of Common Stock, Class B into Common Stock, Class A, and that defendant Brodsky was selling same to unsuspecting purchasers.

65. Defendant Nissan at all times herein mentioned purchased and sold the securities of defendant 3 I Co. for his own account.

66. Defendant Nissan was a creditor of defendant 3 I Co. and defendant Nissan converted his loan into 50,000 shares of defendant 3 I Co. paying only two ($2.00) dollars per share thereof.

67. Defendant Nissan at all times herein mentioned was acquainted with defendant Brodsky.

68. Defendant Nissan at all times herein mentioned was acquainted with defendant Brownstein.

69. Defendant Nissan obtained and/or received a copy of the aforesaid Brownstein Report on defendant 3 I Co.

70. Defendant Nissan discussed the finances of defendant 3 I Co. with defendant Brownstein prior to defendant Brownstein's preparation of this aforesaid Report.

71. Defendant Brodsky discussed the finances of defendant 3 I Co. with defendant Brownstein prior to Brownstein's preparation of this aforesaid Report.

72. Defendant Brodsky obtained and/or received a copy of the aforesaid Brownstein Report on defendant 3 I Co.

73. Defendant Brodsky by letter dated June 23, 1971 wrote to defendant Brownstein advising him of errors in his aforesaid Report.

74. Defendant Brownstein prepared "Bulletins" in August, September and October, 1971 containing additional 3 I Co. corporate and financial information learned by Brownstein after his preparation of the aforesaid Report.

75. Defendant Brownstein never disclosed his receipt of defendant Brodsky's aforesaid letter in any of these Bulletins and despite Brodsky's warnings of errors in his Report, he recommended continued buying of defendant 3 I Co. common stock.

76. Defendant Brodsky owned 154,475 shares of Common Stock Class B of defendant 3 I Co. on December 1, 1969.

77. Defendant Brodsky held 38.4% of voting power of defendant 3 I Co. on December 1, 1969.

78. The aforesaid Common Stock, Class B, of defendant 3 I Co., owned by defendant Brodsky was not available for sale on the "open market."

79. Defendant Brodsky at all times herein mentioned periodically converted large blocks of shares of the aforesaid Common Stock, Class B into Common Stock, Class A.

80. The aforesaid Common Stock, Class A, of defendant 3 I Co. received by defendant Brodsky was sold by defendant Brodsky to unsuspecting purchasers.

81. Defendant Brodsky owned 83,175 shares of aforesaid Common Stock B and 24,700 shares of aforesaid Common Stock A on October 15, 1971.

82. Defendant Brodsky resigned as the Chairman of the Board of Directors of defendant 3 I Co. on December 20, 1971.

83. As part of his termination agreement with defendant 3 I Co., defendant Brodsky gave 25,000 shares of 3 I Co. Common Stock, Class A to defendant 3 I Co.

84. As part of his termination agreement with defendant 3 I Co. defendant Brodsky gave 50,000 shares of Common Stock of Datapro Research Corporation to defendant 3 I Co.

85. Defendant Maurice Brodsky, (hereinafter referred to as "Maurice") was the President of American Micromation Industries, Inc. prior to October 13, 1971.

86. Defendant Maurice was the brother of defendant Brodsky.

87. Prior to October 13, 1971, defendant Maurice was a shareholder in the aforesaid Common Stock, Class A of defendant 3 I Co.

88. Prior to October 13, 1971, defendant Maurice owned

warrants to purchase Common Stock, Class A of defendant 3 I Co.

89. Prior to October 13, 1971, defendant Maurice was a co-guarantor of a certain defendant 3 I Co. bank loan.

90. Prior to October 13, 1971, defendant 3 I Co. had purchased 29% of the Capital Stock of aforesaid American Micromation Industries, Inc. for the sum of $17,500.00.

91. On October 13, 1971, defendant 3 I Co. purchased the remaining 71% of the Capital Stock of the aforesaid American Micromation Industries, Inc. with Common Stock, Class A of defendant 3 I Co. valued at $605,000.00.

92. In addition to the aforesaid Common Stock and as part of the aforesaid purchase of the remaining interest in the aforesaid American Micromation Industries, Inc., defendant 3 I Co. assumed liability for $105,600.00 in convertible debentures for which it issued 3 I Co. convertible debentures in equal exchange.

93. Defendant Maurice at the time of the aforesaid purchase by defendant 3 I Co., although cancelling some of his shares in American Micromation Industries, Inc., still owned 45,000 shares thereof.

94. Defendant 3 I Co. paid the purchase price of $505,729.00 for the "intangible assets" of said American Micromation Industries, Inc.

95. The aforesaid purchase of American Micromation Industries, Inc. was worthless and defendant 3 I Co. within several months thereafter wrote off the aforesaid cost of this purchase as a complete loss.

96. On June 30, 1971, defendant 3 I Co. agreed to purchase all of the assets of Information Company of America, I.C.A. and Information Corporation of America with Common Stock, Class A of defendant 3 I Co. valued at $3,053,857.00.

97. The aforesaid purchase agreement was contingent upon the dissolution of a partnership known as Information Company of America, the Partnership and the purchase of the limited partners' interest in the Partnership in exchange for the Common Stock of Information Corporation of America.

98. Defendant 3 I Co. paid the purchase price of $2,960,904.00 for the "intangible assets" of Information Company of America, I.C.A. and Information Corporation of America.

99. Prior to June 30, 1971, and as part of the aforesaid purchase negotiations, defendant 3 I Co. received auditor's certificates and financial statements concerning the earnings and financial condition of Information Company of America, I.C.A., Information Company of America, the Partnership and Information Corporation of America.

100. The aforesaid financial statements and auditor's certificate dated June 21, 1971 stated Information Company of America, the Partnership had sustained losses from April 29, 1969, the date operations commenced, to date.

101. The aforesaid auditor's certificate stated that a significant amount of the assets of Information Company of America, I.C.A. and Information Corporation of America were invested in Information Company of America, the Partnership.

102. The aforesaid auditor's certificate and financial statements stated that at December 31, 1970, Information Company of America, the Partnership, carried an "asset", deferred development costs, at $60,411.00, which was equivalent to approximately 40% of its total assets.

103. The aforesaid auditor's certificate and financial statements stated that at December 31, 1970, the Information Company of America, I.C.A. carried an "asset", deferred development costs, at $12,500.00, which was equivalent to approximately 13% of its total assets.

104. The aforesaid auditor's certificate stated that Information Company of America, the Partnership was in need of additional working capital for its operations.

105. Information Corporation of America was incorporated on March 7, 1968 and had no operations since that date, other than marketable securities.

106. The balance sheet of Information Corporation of America on March 31, 1971 showed total assets of $35,290.00 of which there were $25,000.00 in marketable securities and $10,000.00 investment in Information Company of America, the Partnership.

107. The balance sheet of Information Company of America, I.C.A., showed a Deficit in the amount of $50,043.00 on December 31, 1970.

108. The statements of operations of Information Company of America, the Partnership, stated a loss for the year 1970 in the amount $55,818.00 and a loss for the year 1969 in the amount of $95,793.00.

109. Despite all the aforesaid negative information, including losses, deficits and inactivity, defendant 3 I Co. entered into the aforesaid purchase agreement of June 30, 1971.

110. On June 30, 1971 defendants Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher were each Officers and/or Directors of either or both of Information Company of America, I.C.A. and Information Corporation of America.

111. On June 30, 1971, aforesaid defendants Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher were all shareholders of Information Company of America, I.C.A. and Information Corporation of America.

112. On or about September 1, 1971, defendant Arthur W. Elias became President and Director of defendant 3 I Co., defendant Marvin S. Riesenbach became Vice President, Treasurer and a Director of defendant 3 I Co. and defendants Marvin Schiller and Irving H. Sher became Vice Presidents of defendant 3 I Co.

113. The aforesaid purchases of Information Company of America, I.C.A. and Information Corporation of America were worthless and defendant 3 I Co. within several months thereafter wrote off the aforesaid cost of these purchases a complete loss.

114. On September 19, 1969 defendant 3 I Co. entered into an agreement with defendants Medische Referatan (Excerpta Medica) N.V., Infonet (Excerpta Medica - Rescona) N.V. and Eltrac (infonet) N.V. for the "purchase" of a "data bank license."

115. The aforesaid agreement, and thereafter under an Amendatory Agreement dated January 14, 1971, included defendant Stichting Excerpta Medica (Excerpta Medica Foundation) as a party thereto since Stichting Excerpta Medica (Excerpta Medica Foundation)

controlled the aforesaid three (3) defendant corporations.

116. On September 19, 1969, defendant Stichting Excerpta Medica (Excerpta Medica Foundation) signed an "Indemnity Agreement" with defendant 3 I Co., in effect indemnifying defendant 3 I Co. as to the performance of its aforesaid subsidiaries under the aforesaid "purchase" agreement.

117. Defendants Medische Referatan (Excerpta Medica) N.V., Infonet (Excerpta Medica - Rescona) N.V. and Eltrac (Infonet) N.V. (hereinafter referred to as "Excerpta Medica") at all times herein mentioned were and still are Netherland corporations, doing business in the United States of America with the United States Food and Drug Administration and in sale of EM publications.

118. Defendant Stichting Excerpta Medica (Excerpta Medica Foundation) (hereinafter also referred to as "Excerpta Medica") at all times herein mentioned was a Netherlands corporation doing business in the State of New York and New Jersey.

119. Defendant Main Lafrentz and Co. (hereinafter referred to as "Lafrentz") at all times herein mentioned were and still are independent certified public accountants.

120. Defendant Lafrentz audited the financial records of defendant 3 I Co. for fiscal year ended June 30, 1970.

121. Defendant Lafrentz examined the financial statements of defendant 3 I Co. for fiscal year ended June 30, 1970.

122 The balance sheet of defendant 3 I Co. for fiscal year ended June 30. 1970 listed therein as an "asset", "data bank licenses, at cost (Note 1) $1,028,506.00", stating $1,000,000.00

as the purchase cost of defendant Excerpta Medica's data bank license.

123. This "asset", i.e. data bank license, was equivalent to 62% of the entire assets of defendant 3 I Co. for fiscal year 1970.

124. Aforesaid "Note 1" relating to the aforesaid data bank license was contained in "Notes to Consolidated Financial Statements" and stated, "In September, 1969, the Company entered into an agreement, subsequently amended in June, 1970, with Excerpta Medica Foundation, a foreign non-profit corporation, for the exclusive right within the United States to market information services from Excerpta's data bank of biomedical information. The consideration for this right is $1,000,000, including 46,666 shares of Class A common stock issued in October, 1969, which the Company can be required to purchase at $15.00 per share in October, 1971, and 30,000 shares of Class A common stock to be issued on December 1, 1970 which the Company can be required to purchase at $5.00 per share in July, 1971. The shares to be issued on December 1, 1970 have been reflected as outstanding in the accompanying financial statements. At its option, the Company can extend this agreement starting July 1, 1971 and thereafter until 1984 by the payment of additional considerations. An amendment to this agreement affecting the extension of certain dates and changes in additional consideration is currently being negotiated."

125. The aforesaid balance sheet of defendant 3 I Co. for fiscal year ended June 30, 1970 stated therein that the "cost"

of this purchase involved "capital in excess of par value" of $842,333.00.

126. As part of their audit of the records of defendant 3 I Co. and using generally accepted standard procedures, defendant Lafrentz was required to read the agreements concerning defendant 3 I Co.'s "purchase" of this data bank license.

127. The aforesaid agreement of September 19, 1969 between defendant Excerpta Medica and defendant 3 I Co. involved 46,666 3 I Co. shares.

128. Although the aforesaid agreement of September 19, 1969 gave defendant Excerpta Medica the "right" to require defendant 3 I Co. to "repurchase" these shares at $15.00 per share, the aforesaid Note 1 reflected the real intent of the parties, that defendant 3 I Co. "can be required to purchase at $15.00 per share in October, 1971. . .".

129. These "shares" held by defendant Excerpta Medica were never repurchased by defendant 3 I Co. and in the Report for fiscal 1972 by defendant 3 I Co. filed with The Securities and Exchange Commission, these "shares" were characterized as "stock rights, previously granted to certain stockholders to require the Company (3 I Co.) to repurchase 46,666 shares of its Class A common stock (which) have terminated during the year ended June 30, 1972."

130. Defendant Fred Von Eugen (hereinafter referred to as "Von Eugen") was involved in securing the aforesaid agreement between defendants Excerpta Medica and 3 I Co. and for his efforts

defendant 3 I Co. agreed by letter dated September 19, 1969 to pay Von Eugen the total amount of $300,000.00; i.e. $150,000.00 with the agreement and $150,000.00 180 days thereafter.

131. The "aggregate" consideration for the "purchase at cost" of the data bank license of $1,000,000.00 was determined by defendant 3 I Co. as $300,000.00 for defendant Von Eugen plus 46,666 3 I Co. shares for defendant Excerpta Medica.

132. Upon signing the aforesaid letter agreement with defendant Von Eugen, defendant 3 I Co. never reflected on its balance sheet as a current liability thereunder of $150,000.00.

133. Defendant 3 I Co. never paid the balance of $150,000.00 "due" to defendant Von Eugen or on about April 27, 1970.

134. This "balance due to Von Eugen" of $150,000.00 was changed into 30,000 shares of 3 I Co.'s Common Stock, Class A for defendant Von Eugen by a second letter agreement dated June 15, 1970, which provided for the issuance of these shares on December 1, 1970.

135. The aforesaid 30,000 shares were not issued to defendant Von Eugen prior to December 1, 1970.

136. The balance sheet of defendant 3 I Co. for fiscal year ended June 30, 1970 incorrectly understated the current liability of defendant 3 I Co. by one hundred fifty thousand ($150,000.00) dollars.

137. The balance sheet of defendant 3 I Co. for fiscal year ended June 30, 1970 and "Note 5" to Consolidated Financial Statements incorrectly and misleadingly stated that "stock issued" for the data bank license was in the amount of $7,667.00 of Common Stock, Class A and in the amount of $342,333.00 of Capital in

excess of par value.

138. Although this said second letter agreement gave defendant Von Eugen the "right" to require defendant 3 I Co. to "repurchase" these 30,000 shares at $5.00 per share, the aforesaid Note 1 once again reflected the real intent of the parties, that defendant 3 I Co. "can be required to repurchase 30,000 shares of Class A common stock. . .".

139. These "shares" held by Von Eugen were never repurchased by defendant 3 I Co. and in the Report for fiscal 1972 of defendant 3 I Co. filed with The Securities and Exchange Commission, these "shares" were characterized as "stock rights" wherein defendant 3 I Co. "has entered into an agreement with a stockholder to issue 7,500 shares of its Class A common stock in exchange for cancellation of that stockholder's rights to require the Company (3 I Co.) to repurchase or register 30,000 shares."

140. The total consideration for the acquisition by defendant 3 I Co. of the aforesaid data bank license was $150,000.00 plus 7,500 shares.

141. There was never purchase "at cost" by defendant 3 I Co. of Excerpta Medica's data bank license for $1,000,000.00.

142. Defendant Lafrentz issued its Certificate (Report) and its Notes to Consolidated Financial Statements of defendant 3 I Co. for fiscal year ended June 30, 1970.

143. Defendant Lafrentz' aforesaid Certificate (Report) and its Notes to Consolidated Financial Statements were contained in defendant 3 I Co.'s Annual Report for fiscal year ended June 30 1970.

144. Defendant Lafrentz' aforesaid Certificate (Report) and its Notes to Consolidated Financial Statements were contained in defendant 3 I Co.'s Form 10 K for fiscal year ended June 30, 1970 filed with Securities and Exchange Commission.

145. Defendant Lafrentz in its aforesaid Certificate (Report) and its aforesaid Notes misleadingly omitted the material facts concerning the aforesaid letter agreements between defendants Von Eugen and 3 I Co.

146. Defendant Lafrentz in this aforesaid Certificate (Report) and its aforesaid Notes misleadingly omitted the material facts that defendant 3 I Co. had failed to pay defendant Von Eugen the second payment of $150,000.00.

147. Defendant Lafrentz in its Certificate (Report) and aforesaid Notes misrepresented material facts and misleadingly omitted material facts concering the purchase "at cost" of the data bank license and defendant Lafrentz misleadingly failed to disclose the major misstatements and omissions of material facts on the financial statements of 3 I Co.

148. Defendant Lafrentz in its Certificate (Report) and its aforesaid Notes misleadingly failed to disclose the fact that the current liabilities on the defendant 3 I Co. balance sheet as of June 30, 1970 was incorrectly understated by one hundred fifty thousand ($150,000.00) dollars.

149. Defendant Lafrentz in its Certificate (Report) and its aforesaid Notes misleadingly omitted material facts and misleadingly failed to disclose the fact that the financial statements of defendant 3 I Co. as of June 30, 1970 incorrectly and misleadingly recorded a total of eight hundred fifty thousand ($850,000.00) dollars common stock, Class A and capital in excess of par value in connection with agreement with Excerpta Medica Foundation.

150. Defendant Lafrentz permitted defendant 3 I Co. to materially inhance its balance sheet assets using legended stock in effect stock rights, as the purchase of an "asset at cost".

151. Defendant Excerpta Medica never received any money under the terms of its aforesaid agreement with defendant 3 I Co.

152. Defendant Excerpta Medica never required defendant 3 I Co. to repurchase the 46,666 shares.

153. Defendant Excerpta Medica accordingly has received no consideration from defendant 3 I Co. for its data bank license.

154. Defendant Von Eugen's total consideration from defendant 3 I Co. for his services in connection with the data bank license was $150,000.00 and 7,500 shares of 3 I Co. Common Stock, Class A.

155. The aforesaid data bank license was worthless to defendant 3 I Co. and in fiscal 1972, defendant 3 I Co. wrote off the $1,000,000.00 "cost" as a complete loss.

156. Defendant Peter Warren (hereinafter referred to as "Warren") at all times herein mentioned was an employee and a Director of defendant Excerpta Medica.

157. Defendant Warren was designated by defendant Excerpta Medica as its attorney-in-fact and agent under the aforesaid agreement of September 19, 1969.

158. Defendant Warren was a Director of defendant 3 I Co.

159. Pursuant to an Agreement and Plan of Reorganization dated April 25, 1969 and Amendment thereto on October 21, 1969 between defendant 3 I Co., Scientific Literature Corporation, Scientific Literature Consultants, Inc. and defendants S. Kim Kessler and Geraldine Kessler (hereinafter together referred to as "Kessler") Scientific Literature Consultants, Inc. was merged into Scientific

Literature Corporation, a subsidiary of defendant 3 I Co.

160. Pursuant to the aforesaid Agreement, 32,000 shares of defendant 3 I Co.'s Common Stock, Class A were issued to shareholders of Scientific Literature Consultants, Inc. and an additional 12,800 shares were held in an escrow fund pending Scientific Literature Corporation's achieving certain earnings during the period of its operations from date of the merger through June 30, 1971.

161. The aforesaid agreement also provided that the shareholders of Scientific Literature Consultants, Inc. might become entitled to receive up to 44,800 additional shares of 3 I Co. stock dependent upon Scientific Literature Corporation's earning record during the aforesaid period.

162. Defendants Kessler owned a substantial amount of shares in Scientific Literature Consultants, Inc.

163. After the aforesaid agreement defendant's Kessler were employed by defendant 3 I Co. to manage Scientific Literature Corporation.

164. For the year ended June 30, 1970, Scientific Literature Corporation sustained a net earnings loss.

165. Despite the aforesaid loss of earnings by Scientific Literature Corporation for the year ended June 30, 1970 and with the aforesaid provisions of the aforesaid Agreement as to the earnings of Scientific Literature Corporation to June 30, 1971, defendant 3 I Co. entered into a "Second Amendment", dated November 2, 1970, whereby the earnings paragraph of the original Agreement was declared null and void and the additional 44,800 shares

of 3 I Co. stock were issued to the shareholders of Scientific Literature Consultants, Inc.

166. Defendant Lafrentz in its aforesaid Certificate (Report) and its aforesaid Notes omitted the fact that Scientific Literature Corporation had sustained a net earnings loss for the year ended June 30, 1970.

167. Defendant 3 I Co. has never filed a report with The Securities and Exchange Commission that the earnings of Scientific Literature Corporation during the period of its operations from the date of the merger through June 30, 1971 was profitable, in support of its "Second Amendment."

168. Plaintiff did not learn the untruths, omissions and/or aforesaid actions of the aforesaid defendants until after defendant 3 I Co. filed its annual 10 K Report for its fiscal year ended June 30, 1972. In this Report, defendant 3 I Co. wrote off its worthless acquisitions, as aforesaid; American Micromation Industries, Inc., Information Company of America, I.C.A., Information Corporation of America and the data bank license. These write offs in fiscal year ended June 30, 1972 as "charged extraordinary items" totalled $4,303,340.00. Furthermore defendant 3 I Co. disclosed the nature of defendant Nissan's "insider" involvement as a 3 I Co. creditor and purchaser of a large block of 3 I Co. stock at a minimal cost. Plaintiff also became aware of the omissions and untruths in defendant Brownstein's aforesaid Report in the light of defendant 3 I Co.'s aforesaid annual 10 K Report.

COUNT I

169. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendants 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren participated singly, acted in concert and/or in furtherance of their common fraudulent combination employed the scheme of a purchase agreement for the data bank license to defraud plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination engaged in a course of business relating to said data bank license which operated as a fraud on plaintiff and the class; aforesaid defendants with the knowledge, assistance and connivance of each other did engage in the aforesaid purchase agreement of the data bank license scheme and conspiracy and/or act, practice or course of business and the material misrepresentations, omissions and untruths thereof, to willfully, directly or indirectly, defraud plaintiff and the class by affecting the value of the 3 I Co. Common Stock and thus affecting the purchase and sale of 3 I Co. Common Stock and by so doing caused plaintiff and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; aforesaid defendants falsely stated consideration for this data bank license purchase; aforesaid defendants caused the balance sheet of defendant 3 I Co. to be grossly -

inflated and exaggerated both as to assets and capital, so as to mislead plaintiff and the class; defendants 3 I Co., Brodsky, Excerpta Medica and Warren falsely and/or misleadingly specified as the consideration for the data bank license purchase agreement 46,666 3 I Co. shares, whereas their intention was to issue 46,666 stock rights which rights they further intended never to use; defendants 3 I Co., Brodsky and Von Eugen falsely and/or misleadingly specified as the consideration for Von Eugen's services in connection with the aforesaid purchase agreement 30,000 3 I Co. shares, whereas their intention was to issue 30,000 stock rights which rights they never fully intended to use; aforesaid defendants 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren participated singly, acted in concert and/or in furtherance of their common fraudulent combination made false and misleading statements of material facts and omitted to state material facts which were necessary to be made in order to make such statements not misleading; aforesaid defendants participated singly, acted in concert and/or in furtherance of the common fraudulent action used this worthless data bank license so as to defraud, deceive and/or mislead plaintiff and the class; said defendants Excerpta Medica, Von Eugen and Warren aided and abetted defendants 3 I Co. and Brodsky by nondisclosure and silence and inaction as to the aforesaid misrepresentations and omissions of material facts made by defendants 3 I Co. and Brodsky and by the aforesaid misrepresentations and omissions of material facts made by defendants Excerpta Medica, Von Eugen and Warren so as to mislead plaintiff and the class;

defendants Excerpta Medica, Von Eugen and Warren knew or should have known of defendants 3 I Co. and Brodsky's aforesaid actions to defraud, deceive and/or mislead plaintiff and the class.

170. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

171. As the result of the aforesaid actions of the aforesaid defendants, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co. without knowledge of the facts hereinbefore alleged.

172. Plaintiff and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT II

173. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendants 3 I Co., Brodsky and Kessler participated singly, acted in concert and/or in furtherance of their common fraudulent combination employed a scheme to enter into the aforesaid "Second Amendment" to their Agreement so to defraud plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination

engaged in a course of business relating to this "Second Amendment" which operated as a fraud on plaintiff and the class; aforesaid defendants with the knowledge, assistance and connivance of each other did engage in the aforesaid "Second Amendment" to their Agreement scheme and conspiracy and/or act, practice or course of business and the material misrepresentations, omissions and untruths thereof, to willfully, directly and indirectly, defraud plaintiff and the class by affecting the value of the 3 I Co. Common Stock and thus affecting the purchase and sale of 3 I Co. Common Stock and by so doing caused plaintiff and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; despite the loss for the Scientific Literature Corporation for fiscal year 1970 aforesaid defendants entered into "Second Amendment" in order to defraud, deceive and/or mislead plaintiff and the class; and aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination made false and misleading statements of material facts and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiff and the class.

174. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

175. As the result of the aforesaid actions of the aforesaid defendants, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co. without knowledge of the facts hereinbefore alleged.

176. Plaintiff and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT III

177. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities Act of 1933, The Securites Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the Certificate (Report) and the aforesaid Notes of the defendant Lafrentz misrepresented material facts and misleadingly omitted material facts concerning the purchase "at cost" of the data bank license and defendant Lafrentz in its Certificate (Report) and its aforesaid Notes misleadingly failed to disclose the major misstatements and omissions of material facts on the financial statements of 3 I Co.; defendant Lafrentz in its aforesaid Certificate (Report) and its aforesaid Notes misleadingly omitted the material facts concerning the aforesaid letter agreements between defendants Von Eugen and 3 I Co.; defendant Lafrentz in its aforesaid Certificate (Report) and its aforesaid Notes misleadingly omitted the material fact that defendant 3 I Co. had failed to pay defendant Von Eugen the aforesaid second payment of $150,000.00;

defendant Lafrentz in its Certificate (Report) and its aforesaid Notes misleadingly failed to disclose the fact that current liabilities on the defendant 3 I Co. balance sheet as of June 30, 1970 was incorrectly understated by one hundred fifty thousand ($I 50,000.00) dollars; defendant Lafrentz in its Certificate (Report) and its aforesaid Notes misleadingly omitted material facts and misleadingly failed to disclose the fact that the financial statements of defendant 3 I Co. as of June 30, 1970 incorrectly and misleadingly recorded a total of eight hundred fifty thousand ($850,000.00) dollars, common stock, Class A and capital in excess of par value, in connection with agreement with Excerpta Medica Foundation; defendant Lafrentz failed to disclose in its Certificate (Report) and its aforesaid Notes the fact that Scientific Literature Corporation had sustained a loss of earnings for fiscal year 1970 as applicable to the aforesaid "Second Amendment" between defendant 3 I Co., Brodsky and Kessler; defendant Lafrentz in its Certificate (Report) and its aforesaid Notes made misrepresentations of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the statements under which they were made, not misleading, and in so doing defendant Lafrentz affected the value of the 3 I Co. common stock, thus affecting the purchase and sale of 3 I Co. common stock and by so doing caused plaintiff and the class to purchase said 3 I Co. common stock without knowledge of the facts hereinbefore alledged; defendant Lafrentz aided and abetted the omissions of material facts and the non-disclosures of material facts of defendant 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren as

to the aforesaid purchase agreement of the data bank license in order to defraud, deceive and/or mislead plaintiff and the class; defendant Lafrentz aided and abetted the misrepresentations of material facts of defendants 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren as to the aforesaid purchase agreement in order to defraud, deceive and/or mislead plaintiff and the class; defendant Lafrentz aided and abetted the omissions of material facts and the non-disclosures of material facts of defendants 3 I Co., Brodsky and Kessler as to the aforesaid "Second Amendment" in order to defraud, decieve and/or mislead plaintiff and the class; defendant Lafrentz aided and abetted the misrepresentations of material facts of defendants 3 I Co., Brodsky and Kessler as to the aforesaid "Second Amendment" in order to defraud, deceive and/or mislead plaintiff and the class; defendant Lafrentz knew or should have known of the misrepresentations of material facts and omissions and non-disclosures of material facts of defendants 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren as to the aforesaid data bank purchase agreement; and defendant Lafrentz knew or should have known of the misrepresentations of material facts and omissions and non-disclosures of material facts of defendants 3 I Co., Brodsky and Kessler as to their "Second Amendment" to their original Agreement.

173. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

179. As the result of the aforesaid actions of the aforesaid defendant, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co. without knowledge of the facts hereinbefore alleged.

180. Plaintiff and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT IV

181. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of Securities Act of 1933, Securities Exchange Act of 1934, the Rules and Regulations of the Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, defendants 3 I Co., Brodsky and Maurice participated singly, acted in concert and/or in furtherance of their common fraudulent combination employed a scheme to purchase the remaining interest in American Micromation Industries, Inc. so as to defraud plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination engaged in a course of business in purchasing the remaining interest in American Micromation Industries, Inc. which operated as a fraud on plaintiff and the class; aforesaid defendants with the knowledge, assistance and connivance of each other did engage in the purchase of the worthless remaining interest in American Micromation Industries, Inc. scheme and conspiracy and/or act, practice or course of business and the material misrepresentations, omissions and untruths thereof, to willfully, directly and indir-

ectly, defraud plaintiff and the class by affecting the value of the 3 I Co. Common Stock and thus affecting the purchase and sale of 3 I Co. Common Stock and by so doing caused plaintiff and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; despite the fact that aforesaid defendants knew that the purchase price of the aforesaid remaining interest was grossly disproportionate to the original purchase of an interest therein, aforesaid defendants consummated the purchase in order to defraud, deceive and/or mislead plaintiff and the class; aforesaid defendants failed to act at "arms-length" for the purchase negotiations in order to defraud, deceive and/or mislead plaintiff and the class; aforesiad defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination made false and misleading statements of material facts and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination purchased this worthless remaining interest in aforesaid American Micrömation Industries, Inc. so as to defraud, deceive and/or mislead plaintiff and the class.

182. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($.50) per share.

183. As the result of the aforesaid actions of the aforesaid defendants, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co.

184. Plaintiff and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT V

185. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendants 3 I Co., Brodsky, Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher participated singly, acted in concert and/or in furtherance of their common fraudulent combination employed a scheme to purchase the assets of Information Company of America, I.C.A. and Information Corporation of America so as to defraud plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination engaged in a course of business in purchasing the assets of these aforesaid corporations which operated as a fraud on plaintiff and the class; aforesaid defendants with the knowledge, assistance and connivance of each other did engage in the aforesaid purchase of the worthless assets of these aforesaid corporations scheme and conspiracy and/or act, practice or course of business and the material misrepresentations, omissions and untruths thereof, to willfully, directly and indir-

ectly, defraud plaintiff and the class by affecting the value of the 3 I Co. Common Stock and thus affecting the purchase and sale of 3 I Co. Common Stock and by so doing caused plaintiff and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; despite the fact that these defendants knew that one of these corporations was inactive and that the other corporation was in deficit, aforesaid defendants consummated this purchase in order to defraud, deceive and/or mislead plaintiff and the class; aforesaid defendants failed to act at "arms-length" for the purchase negotiations in order to defraud, deceive and/or mislead plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of the common fraudulent combination made false and misleading statements of material facts and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of the common fraudulent combination purchasing these worthless assets of these aforesaid worthless corporations so as to defraud, deceive and/or mislead plaintiff and the class.

186. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

187. As the result of the aforesaid actions of the aforesaid defendants, plaintiff and the class were induced to pur-

chase the Common Stock, Class A of defendant 3 I Co.

188. Plaintiff and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT VI

189. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendants Nissan and Walston employed schemes and/or artifices to defraud plaintiff and the class; defendant Nissan participated singly, acted in concert and/or in furtherance of various fraudulent combinations with defendants Brownstein, 3 I Co. and Brodsky, employed schemes and/or artifices to defraud plaintiff and the class; defendants Nissan and Walston engaged in acts, practices and/or a course of business which operated as a fraud on plaintiff and the class; defendant Nissan participated singly, acted in concert and/or in furtherance of various combinations with defendants Brownstein, 3 I Co. and Brodsky, engaged in acts, practices and/or a course of business which operated as a fraud on plaintiff and the class; defendant Nissan in furtherance of the various fraudulent combinations into which these aforesaid defendants had entered with intent to deceive and/or defraud plaintiff and the class discussed the finances of defendant 3 I Co. with defendant Brownstein and recommended the financial prospects of defendant 3 I Co. to defendant Brownstein prior to his preparation of a Report on defendant

3 I Co. and advised and "tipped" to other firms, brokerage houses and individuals in the business and investment community of the advent of said Report; defendant Nissan in furtherance of the various fraudulent combinations into which all these aforesaid defendants had entered did engage in a scheme and conspriacy and/or act, practice or course of business and the material misrepresentations, omissions and untruths thereof, to willfully, directly and indirectly, defraud plaintiff and the class by affecting the value of the 3 I Co. Common Stock and by so doing caused plaintiff and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; defendants Nissan and Walston were in a collusive position as to defendant 3 I Co. since defendant Nissan was a shareholder and creditor thereof and was employed as a broker by defendant Walston, a dealer and "market-maker" in defendant 3 I Co.'s securities; defendants Nissan and Walston in their relationships with these aforesaid defendants were insiders with private access to 3 I Co.; defendants Nissan and Walston traded and dealt in the securities of 3 I Co. for their own profit and benefit while possessing, utilizing and "tipping" insider information; defendant Nissan participated singly, acted in concert and/or in furtherance of the various fraudulent combinations with defendants Brownstein, 3 I Co. and Brodsky made false and/or misleading statements of material facts and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiff and the class; defendant Nissan knew that his statements as to the finances of defendant 3 I Co. were untrue and that his evaluations of 3 I Co.'s then present financial condition

and business operations were incorrect and his estimates of future earnings and prospects were grossly overstated and unfounded so as to defraud, deceive and/or mislead plaintiff and the class; the defendant Walston failed to exercise reasonable supervision over defendant Nissan to prevent all the aforesaid; defendant Walston permitted defendant Nissan to control a major portion of trading 3 I Co. securities; defendant Walston permitted defendant Nissan to be in a collusion position in permitting defendant Nissan to act as a broker in 3 I Co. securities while he was a shareholder and creditor of 3 I Co.; defendant Walston by its silence and inaction permitted defendant Nissan to defraud, deceive and/or mislead plaintiff and the class.

190. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

191. As the result of the aforesaid actions of the aforesaid defendants, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co.

192. Plaintiff and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT VII

193. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities

Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendant Brownstein employed a scheme to defraud plaintiff and the class; defendant Brownstein participated singly, acted in concert and/or in furtherance of various fraudulent combinations with defendants Nissan and Brodsky employed a scheme to defraud plaintiff and the class; defendant Brownstein engaged in the act of preparing a Report of defendant 3 I Co. which operated as a fraud on plaintiff and the class; defendant Brownstein participated singly, acted in concert and/or in furtherance of various fraudulent combinations with defendants Nissan and Brodsky engaged in the act of preparing a Report on defendant 3 I Co. which operated as a fraud on plaintiff and the class; defendant Brownstein in furtherance of the various combinations into which these aforesaid defendants had entered with intent to deceive and defraud plaintiff and the class prior to his preparation of his aforesaid Report on defendant 3 I Co. discussed the finances of said defendant 3 I Co. with defendant Nissan and Brodsky and informed these defendants that he was preparing the aforesaid Report; defendant Brownstein in discussing with defendant Nissan the finances of 3 I Co. and in advising defendant Nissan of the advent of his aforesaid Report did so with the knowledge that defendant Nissan owned securities of defendant 3 I Co. and that defendant Nissan was a registered representative employed by defendant Walston, a dealer and "market-maker" in the securities of 3 I Co.; defendant Brownstein in

discussing with defendant Brodsky the finances of 3 I Co. and in advising defendant Brodsky of the advent of his aforesaid Report did so with the knowledge that defendant Brodsky was the major stockholder and chief officer and director of 3 I Co.; defendant Brownstein participated singly, acted in concert and/or in furtherance of the various fraudulent combinations with defendant 3 I Co., Nissan and Brodsky prepared the aforesaid Report on defendant 3 I Co. which Report contained false and/or misleading statements of material facts and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiff and the class; defendants Brownstein, Marine Midland and Dreyfus in furtherance of the various fraudulent combinations into which all these aforesaid defendants had entered did engage in a scheme and conspiracy and/or act, practice or course of business and the material misrepresentations, omissions and untruths thereof, to willfully, directly and indirectly, defraud plaintiff and the class by affecting the value of the 3 I Co. Common Stock and by so doing caused plaintiff and the class to purchase said 3 I Common Stock without knowledge of the facts hereinbefore alleged; defendant Brownstein aided and abetted the fraudulent schemes and acts, practices and course of business of defendants Nissan, Walston, 3 I Co. and Brodsky; defendant Brownstein knew that his aforesaid Report contained inflated reports, untrue material statements, incorrect statements and evaluations of defendant 3 I Co.'s present financial condition and business operations and grossly overstated, reckless and unfounded pro ections of defendant 3 I Co.'s future

earnings and prospects so as to defraud, deceive and/or mislead plaintiff and the class; defendant Brownstein failed to sufficiently investigate the known and filed information of defendant 3 I Co.'s finances which would lead to other information which should have been incorporated in his aforesaid Report; defendant Brownstein and Marine Midland failed to properly investigate the finances of defendant 3 I Co. before preparing, finalizing and approving the aforesaid Report so as not to defraud, deceive and/or mislead plaintiff and the class; defendant Brownstein in his relationships with defendant Brodsky was an insider with private access to 3 I Co.; defendant Brownstein for his own profit and benefit traded in the securities of 3 I Co. while possessing, utilizing and "tipping" insider information and mailing, delivering and/or distributing copies of his aforesaid Report; defendant Marine Midland failed to exercise reasonable supervision over defendant Brownstein to prevent all of the aforesaid; defendant Marine Midland by its silence and inaction permitted and/or acquiesced for defendant Brownstein to defraud, deceive and/or mislead plaintiff and the class; defendants Marine Midland and Dreyfus benefited by defendant Brownstein's aforesaid actions and accordingly defendant Marine Midland and Dreyfus were insiders with private access to 3 I Co. and as insiders possessing, utilizing and "tipping" inside information and mailing, delivering and/or distributing copies of defendant Brownstein's aforesaid Report, defendants Marine Midland and Dreyfus for their own profit and benefit traded in the securities of 3 I Co.

194. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was

caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

195. As the result of the aforesaid actions of the aforesaid defendants, plaintiff and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co.

196. Plaintiff and the Class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

JUDGEMENT

WHEREFORE, plaintiff and the Class demands judgement against defendants, as follows:

(a) that this action be declared as maintained as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure;

(b) that defendants be adjudged jointly and severally liable to plaintiff and the plaintiff class for compensatory damages in the amount of $15,000,000.00 and, in addition, punitive damages;

(c) that plaintiff be awarded costs and reasonable counsel's fees,

together with such other and further relief as to this Court shall appear just and equitable.

Robert R. Felton

ROBERT R. FELTON
Attorney for the Class
42 Third Avenue
Mineola, New York 11501
516-746-5711

NOTICE OF MOTION BY MAIN LAFRENTZ FOR SUMMARY JUDGMENT
(Filed November 5, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,	:	
Plaintiff,	:	73 Civ. 2200 DBB
-against-	:	NOTICE OF MOTION
WALSTON AND CO., INC., et al.	:	
Defendants.	:	

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavits of Milton Kunen and Frank G. Warburton, and the exhibits attached thereto, both sworn to the 1st day of November, 1973, and upon all the prior proceedings heretofore had herein, the undersigned will move this Court at Room 1506, United States Courthouse, Foley Square, New York, New York, on the 12th day of November, 1973 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary judgment to the defendant Main Lafrentz & Co. on the ground that there is no genuine issue as to any material fact and that the defendant Main Lafrentz & Co. is entitled to judgment as a matter of law, and for such other and further relief as to the Court may seem just and proper.

Dated: November 1, 1973.

Yours, etc.,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

By _____
a member of the firm

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON, Plaintiff,	:	
-against-	:	No. 73 Civ. 2200 DBB
WALSTON AND CO., INC., et al. Defendants.	:	

STATEMENT PURSUANT TO RULE 9(g) OF THE GENERAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

There is no genuine issue to be tried with respect to the following facts:

1. The opinion of Main Lafrentz & Co. with respect to the data bank license which plaintiff claims was overvalued on the balance sheet of 3I Co./Information Interscience, Inc. ("3I") stated that the financial statements presented fairly the financial position of 3I, subject to the realization of carrying value of data bank licenses; and Lybrand Ross Bros. & Montgomery, who succeeded Main Lafrentz as accountants for 3I, issued a similar qualified opinion with respect to the same item in the following fiscal year.

2. The loss suffered by 3I's wholly-owned subsidiary, Scientific Literature Corp. ("SLC") during the 1970 fiscal year, which plaintiff alleges should have been stated in the consolidated financial statement of 3I and its subsidiaries for that fiscal year, was $1,055 and was so indicated in the form 10-K filed with the SEC by 3I for that

year; the 3I consolidated statement of operations disclosed a consolidated loss of 3I and its subsidiaries of $555,577 for that fiscal year.

3. The results of operations of SLC during the 1970 fiscal year showed a profit of $81,307 before taxes and indirect general and administrative expenses, 3I charged SLC $82,362 for indirect general and administrative expenses during that year, and such charges for indirect general and administrative expenses were not considered in determining the number of additional shares the former shareholders of SLC were entitled to under the agreement by which 3I acquired SLC.

4. The footnotes to the financial statement of 3I for the fiscal year ended June 30, 1970 stated that in 3I's opinion, SLC would achieve the necessary earnings which would have entitled the sellers to receive the additional shares under the agreement by which 3I acquired SLC which were issued to them by 3I pursuant to an amended agreement.

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER
Attorneys for Main Lafrentz & Co.
425 Park Avenue
New York, New York 10022
(212) PL 9-8400

AFFIDAVIT OF MILTON KUNEN IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

v.

WALSTON AND CO., INC., et al.,

Defendants.

73 Civ. 2200 DBB

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MILTON KUNEN, being duly sworn, deposes and says:

1. I am a member of the firm of Kaye, Scholer, Fierman, Hays & Handler, attorneys for defendant Main Lafrentz & Co. ("Main Lafrentz"). I make this affidavit in support of Main Lafrentz' motion for summary judgment in this action. I conducted the deposition of plaintiff which is made a part of this application, and my statements of fact herein are based upon that examination and upon the exhibits received therein as well as the documents attached hereto.

INTRODUCTION

2. This motion is made because the undisputed facts of this case demonstrate that insofar as it concerns Main Lafrentz the action is totally devoid of merit, is frivolous and was brought merely for harassment. Main Lafrentz should not be subjected to the enormous expense of defending what plaintiff claims is a multi-million dollar class action on the basis of gross mischaracterizations by the plaintiff, his failure to inquire into the

facts of the case prior to naming Main Lafrentz, and his ignoring of the facts on the public record contained in the files of the Securities and Exchange Commission ("SEC"), the very files which he claims to have examined over an extended period of time prior to joining defendant Main Lafrentz as a party defendant in his amended complaint.

3. While we will review the background of this litigation and all of the spurious contentions of the plaintiff at length herein, it is important to point out at the outset the shallowness of the two basic claims plaintiff asserts against Main Lafrentz:

(a) Plaintiff claims that a certain data bank license acquired by 3I Co./Information Interscience, Inc. ("3I") and carried on its balance sheet at $1 million was overvalued. While it is Main Lafrentz' position, as will be demonstrated point by point below, that the data bank license was properly valued and that this contention of plaintiff is totally frivolous, the main thrust of this motion is that Main Lafrentz can have no liability because it issued a qualified opinion, and the opinion was specifically qualified on this very item. Plaintiff's complaint is based on the erroneous assumption that Main Lafrentz certified the value of this data bank license as $1 million. In fact, Main Lafrentz specifically qualified its opinion to state that the financial statements of 3I presented fairly the financial picture of that company "subject to the realization of carrying value of data bank licenses and investments in affiliated companies as discussed in Notes 1 and 2 of Notes to Consolidated Financial Statements." In short, assuming -- contrary to the fact -- that the data bank

license was overvalued in 3I's financial statements, Main Lafrentz specifically and unequivocally warned investors not to rely on that value. In such circumstances, there can be no possible claim against Main Lafrentz. Parenthetically, it should be mentioned here that plaintiff's complaint fails to point out that the international accounting firm of Lybrand, Ross Bros. & Montgomery ("Lybrand"), which is not a defendant in this case, succeeded Main Lafrentz as 3I's auditors in the following year and, according to the documents filed with the SEC, 3I carried this same data bank license at the same value in that year, and Lybrand issued the same qualification. It was not until two years after the Main Lafrentz audit in question that the data bank license was written off; and, as stated in the financial statement issued in that year, it was written off because 3I was unable to realize the carrying value of the data bank license -- precisely the situation which had caused Main Lafrentz to qualify its opinion two years earlier.

(b) Plaintiff's second charge against Main Lafrentz is that it failed to reveal in a footnote to the Consolidated Financial Statements of 3I that Scientific Literature Corp. ("SLC"), a 3I subsidiary, had sustained a loss during that period. However, plaintiff fails to point out (i) that the total loss allegedly "omitted" from the footnotes was the insignificant sum of $1,055; (ii) that this loss was miniscule as against the consolidated loss of 3I, clearly and unequivocally revealed in the annual report which contained the financial statement upon which Main Lafrentz issued its qualified opinion: which amounted to a

loss of $555,577 for that fiscal year; (iii) SLC actually generated a profit of $81,307 during that fiscal year, but the $81,307 profit was converted to a loss of $1,055 by an intercompany charge of $82,362 for indirect general and administrative expenses of 3I; (iv) the financial statement was a consolidated financial statement, which would not normally set forth the operations of the subsidiary and in which the intercompany charge would not be reflected; and (v) the financial statements filed with the SEC showed the $1,055 loss in that subsidiary. In short, the plaintiff, by omitting the true facts in his amended complaint, seeks to make a mountain out of a molehill by giving the false impression that Main Lafrentz omitted to state that there was a large loss in this subsidiary. The truth of the matter is that the revelation of this insignificant matter would only have served to complicate and confuse the financial report, and it is for this reason that the SEC requires only that consolidated reports be submitted to shareholders, as was done here.

4. Parenthetically,the Court should be aware of the overall financial picture of this corporation. As pointed out above, the financial statements upon which the action against Main Lafrentz is brought showed substantial losses during that fiscal year: $555,577. The same annual report showed that in the prior fiscal year 3I lost $692,460. The balance sheet showed total assets for the year ended June 30, 1970 at $1,647,219, of which over $1.2 million was subject to the Main Lafrentz qualification. It also showed an accumulated deficit of $1,456,449; net book value was approximately $.80 per share. The financial statement

showed that the data bank license, carried at $1 million, was in its initial stages and had not realized any significant revenues. In sum, no reasonable investor could possibly have relied on this financial statement in determining whether or not to invest in this company.

HISTORY OF PLAINTIFF AND HIS TRANSACTIONS IN 3I STOCK

5. Plaintiff, Robert Felton, is an attorney-at-law, 95% of whose practice is in the negligence field (Tr. 15). He has been a certified public accountant since approximately 1953 (Tr. 7) (although he contends that he has never practiced accounting). Mr. Felton brings this action on his own behalf and, he alleged, on behalf of all persons who purchased the stock of 3I during a particular period. Mr. Felton intends to act both as plaintiff and as attorney for the class.

6. According to Felton, he made his first purchase of 3I stock in July of 1970. The purchase came about because Felton was told by his brother, a doctor, that there was a certain Mr. Nissan, a registered representative connected with the brokerage house of Walston & Co., Inc. ("Walston"), who was "bright" (Tr. 54). Felton claims that he phoned Nissan and was told by Nissan that he (Nissan) would take Felton on as a customer if he would sell all of his other stock (Tr. 55). Without more, plaintiff Felton did so and became a customer of Nissan (Tr. 56).

7. One of the stocks allegedly recommended to Felton by Nissan was the instant 3I stock. According to

Felton, based on Nissan's rosy predictions that the stock would greatly appreciate in value and he would thus be able to make up for his loss in another stock where he had lost money, he first purchased the 3I stock (Tr. 86).

8. At the time Felton made his first purchase of 3I stock, he knew absolutely nothing about 3I. He did not even know what business it was in (Tr. 86) and he saw no financial statement or report of the company. Nevertheless, Felton purchased 2,000 shares of 3I stock at $4.25 per share on July 9, 1970 (Tr. 386).

9. It is not necessary to detail the history of Felton's purchases and sales of 3I stock. Suffice it to say that the stock greatly appreciated in value, and that over the course of several months Felton sold portions of his stock at various times and at enormous profit. According to Felton's own testimony, the impetus to all of these purchases was the continuous statements by Nissan that the price of the stock would go much higher. Thus, between July 9, 1970 and June of 1971 Felton was in and out of the 3I stock at various times, each time making a handsome profit, with the range of the stock going from 4-1/4 a share when he first purchased it to 19-3/8 when he made his last sale.

10. Unfortunately for plaintiff, the precipitous rise in the value of the 3I stock, which had paid enormous profits to him, was matched by a precipitous decline after he made his last purchase at approximately $20 per share. Having seen his enormous profits turn to loss, plaintiff now seeks to recoup the losses on this speculation in 3I by initiating a class action and obtaining an attorney's fee in connection with its disposition.

PLAINTIFF'S CHARGES AGAINST WALSTON AND MARINE MIDLAND BANK-NEW YORK ("MARINE MIDLAND")

11. The original complaint did not name Main Lafrentz as a party. The complaint was based on an alleged claim of manipulation by Walston and Marine Midland. In the original complaint the allegations against Walston were limited basically to contentions that Walston was making a market in the 3I stock and that Felton was misled into purchasing the stock by Mr. Nissan's misrepresentations.

12. Felton's claim against Marine Midland is that the bank prepared an internal report for its own use which recommended the 3I stock to the representatives of the bank entrusted with making investments for bank clients. Plaintiff appears to contend that the report was erroneous and that the market price of stock was somehow inflated by a conspiracy between defendant Nissan of Walston and defendant Brownstein of Marine Midland.

13. It is clear that, leaving aside the merit of these claims, they have nothing whatever to do with Main Lafrentz. The claim against Main Lafrentz, which will be discussed in detail below, relates to the financial statements for the fiscal year ended June 30, 1970 contained in 3I's 1970 annual report, on which Main Lafrentz issued a qualified opinion. Felton contends that he received a copy of 3I's 1970 annual report from Nissan in about March of 1971, but that he read it only hastily, does not recall whether he read the footnotes to the financial statements and did not retain a copy of it. (Tr. 354-57) It is significant that

when plaintiff instituted the instant action on May 4, 1973, the only defendants were Walston, Marine Midland and their employees and 3I. Apparently, plaintiff did not think enough of his claim to join Main Lafrentz as a party defendant. Main Lafrentz was first joined in the amended complaint, which was filed on August 14, 1973.

MAIN LAFRENTZ

14. Main Lafrentz is an international firm of certified public accountants with offices in major cities in the United States and throughout the world. Its only connection with 3I was as the auditors of the financial statements for the 3I fiscal years ended June 30, 1969 and June 30, 1970. Subsequent to the issuance of the financial statements for the 1970 fiscal year Main Lafrentz was succeeded as auditors for 3I by Lybrand.

15. The only claim which plaintiff makes against Main Lafrentz relates to 3I's financial statement for the fiscal year ended June 30, 1970. An analysis of the amended complaint and his statement at his deposition (Tr. 629) demonstrate that the claim against Main Lafrentz is limited to two aspects of the 3I business during the fiscal year ended June 30, 1970:

(1) the acquisition of a data bank license from defendant Excerpta Medica Foundation ("Excerpta Medica"); and

(2) the amendment to the acquisition agreement of a wholly-owned subsidiary, SLC, from defendants S. Kim Kessler and Geraldine Kessler (the "Kesslers").

3I COMPANY

16. 3I was a commercial storehouse of scientific and technical information. Its scientific information center contained various data bases in biomedical, technical and scientific fields. It was also engaged in performing editing and indexing services in connection with technical material, and in microfilming services as well as other technical data-gathering and dispensing services. Despite book value of 80¢ per share at the end of the 1970 fiscal year and consistently poor results amounting to losses (per share) of 13¢ in 1968, 46¢ in 1969 and 34¢ in 1970, the price of the 3I stock consistently sky-rocketed. The range in 1968 was 69 to 5, and in 1969 40 to 9 after a 3 for 1 split in January of 1969.

ACQUISITION OF THE DATA BANK LICENSE FROM EXCERPTA MEDICA

17. On September 19, 1969 3I entered into an agreement with Excerpta Medica, a non-profit foundation located in the Netherlands, by which 3I obtained an exclusive license to use its data bank in the United States. A copy of this agreement is attached hereto as Exhibit 1. In accordance with the contract, 46,666 shares of 3I stock were issued to Excerpta Medica. This was restricted stock, but Excerpta Medica had the right to require 3I to purchase this

stock from Excerpta Medica in October 1971 at $15 per share and to require 3I to register those shares not repurchased. These shares were valued at $700,000 on the books of 3I on the basis of the $15 price, which was below the market value at the time and was the price which 3I was obligated to pay Excerpta Medica in cash at a certain date.

18. Simultaneously, 3I, by letter agreement dated September 19, 1969, obligated itself to pay a finder's fee in the sum of $300,000 to Fred Von Eugen, $150,000 of which was paid then, and the other $150,000 of which was to be paid within 180 days of the closing. A copy of this letter agreement is attached hereto as Exhibit 2. Thereafter, this obligation for the payment of the balance of the purchase price of $150,000 was cancelled pursuant to an amendment dated June 15, 1970, and Von Eugen was to receive 30,000 shares of the stock of 3I, subject to the agreement of 3I to repurchase the 30,000 shares in July of 1971 at a price of $5 per share, and subject also to the finder's right to require 3I to register the 30,000 shares. A copy of this agreement is attached hereto as Exhibit 3. The stock received by the finder was valued on the books of 3I at $150,000, or $5 per share. This valuation was reached by taking into account the fact that 3I was obligated to repurchase at this price and that this price was below the then market value.

19. Pursuant to a later amendment, dated April 5, 1972 (well after Lybrand had succeeded Main Lafrentz as the auditors for 3I) Von Eugen agreed to relinquish his right to require 3I to register his stock and to repurchase his stock at $5 per share in exchange for the issuance to him of an <u>additional</u> 7,500 shares. A copy of this agreement is

attached hereto as Exhibit 4. As a result, as of April 5, 1972, the finder had received a total of 37,500 shares in connection with 3I's purchase of this data bank license.

DISCLOSURE OF THE DATA BANK LICENSE ACQUISITION ON THE 3I BALANCE SHEET

20. Taking into account the agreements of the parties, as amended as of that date, on June 30, 1970, the date of the balance sheet in 3I's 1970 annual report, which is the subject of this litigation, 3I showed on its books and reported to its shareholders that it had paid a total of $1,000,000 for the acquisition of this data bank license as follows:

Cash	$150,000
46,666 shares issued in 1969 (valued at the repurchase price of $15 per share)	700,000
30,000 shares to be issued in December 1970 (valued at the repurchase price of $5 per share)	150,000*

21. The annual report for the fiscal year ended June 30, 1970 showed the following with respect to data bank licenses:

Data bank licenses, at cost (note 1) $1,028,606

Of this total, $1,000,000 was attributed to the data bank license acquired from Excerpta Medica.** A copy of that financial statement is attached hereto as Exhibit 5.

22. Note 1 to the 3I financial statement of June 30, 1970 (Ex. 5) stated the following with regard to the acquisition of this data bank license:

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*Needless to say, the additional 7,500 shares issued to the finder in accordance with the amendment dated April 5, 1972 did not appear in 3I's financial statements until the end of the 1972 fiscal year.

**The additional $28,606 was attributable to two other data bank licenses.

"In September, 1969, the Company entered into an agreement, subsequently amended in June, 1970, with Excerpta Medica Foundation, a foreign non-profit corporation, for the exclusive right within the United States to market information services from Excerpta's data bank of biomedical information. The consideration for this right is $1,000,000, including 46,666 shares of Class A common stock issued in October, 1969, which the Company can be required to purchase at $15.00 per share in October, 1971, and 30,000 shares of Class A common stock to be issued on December 1, 1970 which the Company can be required to purchase at $5.00 per share in July, 1971. The shares to be issued on December 1, 1970 have been reflected as outstanding in the accompanying financial statements. At its option, the Company can extend this agreement starting July 1, 1971 and thereafter until 1984 by the payment of additional considerations. An amendment to this agreement affecting the extension of certain dates and changes in additional consideration is currently being negotiated.

During the second half of the fiscal year ended June 30, 1970, the Company commenced marketing its services in connection with the data bank licenses acquired during the year, and had not realized any significant amount of revenues from these services. Accordingly, the Company has not begun to amortize the acquisition costs of these rights and has deferred the determination of its policy in regard to the amortization."

23. This footnote set forth in detail the manner in which 3I had valued the data bank license acquired from Excerpta Medica. It stated that the total consideration was $1,000,000, and that sum included 46,666 shares which 3I could be required to purchase at $15.00 per share, and 30,000 shares which 3I could be required to repurchase at $5.00 per share. And Note 6 to the same financial statement (Ex. 5) showed the following with respect to the stock issued in connection with the Excerpta Medica transaction:

	Common Stock Class A	Common Stock Class B	Capital in excess of par value	Accumulated deficit
Stock issued in connection with agreement with Excerpta Medica Foundation (note 1)	$7,667		$842,333	

The dollar amounts attributable to the stock issued in this transaction, as set forth in Note 6, totals $850,000. Any shareholder or prospective investor who cared to do so could have made the arithmetic computations which showed that the 3I stock which 3I was obligated to repurchase at $15.00 per share had been valued at $700,000 (46,666 x $15.00), and that the stock which 3I was obligated to repurchase for $5.00 per share had been valued at $150,000 (30,000 x $5.00), totaling the $850,000 set forth in Note 6, and that the remainder, $150,000 had been paid in cash ($1,000,000 - $850,000). Similarly, the 1969 10-K of 3I showed, at page 8, that 3I had paid $150,000 in cash and had issued 46,666 shares which it was obligated to repurchase at $15.00 per share in connection with this acquisition and that 3I was obligated to pay $150,000 additionally on April 30, 1970. The 1970 10-K of 3I showed, at page 6, that the obligation to pay $150,000 in April 1970 had been cancelled and in consideration therefor 3I was obligated to issue 30,000 shares of 3I stock on December 1, 1970, which it was obligated to repurchase at $5.00 per share. Copies of the 1969 and 1970 10-K's will be handed up to the Court at the argument of this motion. In short, any interested person was afforded a complete disclosure of the transaction and the manner in which 3I valued the data bank license on the balance sheet, both in

the annual report and in the form 10-K filed with the SEC.

24. Of course, this disclosure, which is total from every point of view, was contained in statements of 3I, not of Main Lafrentz. Most important to any investor interested in the value of this data bank license was the fact that the Main Lafrentz opinion (Ex. 5), in paragraph 2 thereof, is specifically qualified with regard to this item:

> "In our opinion, subject to the realization of carrying value of data bank licenses and investments in affiliated companies as discussed in notes 1 and 2 of Notes to Consolidated Financial Statements, such financial statements present fairly the financial position of 3I Company/Information Interscience Incorporated and subsidiaries at June 30, 1970, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year" (emphasis added).

Consequently, any interested investor examining the qualified opinion of Main Lafrentz and the footnotes referred to therein, was warned that Main Lafrentz would not issue an unqualified opinion regarding the value of this data bank license as carried on the 3I books, and any reader of the 3I financial statement was put on notice to carefully assess and scrutinize the present and future performance of this new investment which had not contributed any significant revenues.

PLAINTIFF'S CLAIMS AGAINST
MAIN LAFRENTZ REGARDING
THE DATA BANK LICENSE.

25. Ignoring the fact that the Main Lafrentz report concerning the 3I financial statement was specifically

qualified with respect to the value of the data bank license reflected therein, plaintiff nevertheless makes several claims against Main Lafrentz with regard to this item. As we will demonstrate below, each such claim is based on a complete misconception of the facts and a deliberate misreading of the documents filed with the SEC in connection with this transaction. The disclosure in the company's financial statement was full and complete, and plaintiff can make no contention against any party with respect to this item. However, it bears emphasis that even if plaintiff can support one, or even all, of his contentions, his claim of misrepresentations and omissions is limited to a claim against 3I. He has no complaint against Main Lafrentz, which specifically qualified its opinion with regard to this item.

26. Plaintiff contends that the data bank license was overvalued in that 3I actually only paid $150,000 plus 7,500 shares for this license (Am. Complt. ¶¶ 129, 130). However, plaintiff overlooks the issuance of 46,666 shares to Excerpta Medica and 30,000 shares to the finder Von Eugen in connection with this transaction, by the following distortions of the incontrovertible facts:

(a) Plaintiff seems to contend that Excerpta Medica never received the 46,666 shares of 3I stock and that it received only a "right" to require the "repurchase" of 3I stock at $15.00 per share (Am.Complt. ¶ 120). However, there can be no doubt but that Excerpta Medica received the 46,666 shares of stock in 1969, and upon receipt it had the same rights as other shareholders, except for certain re-

strictions upon transferability.* Attached hereto as Exhibit 6 is a photocopy of the receipt for those shares. This should put any contention that the shares were not actually received by Excerpta Medica to a quick res . Of course, the entire allegation is irrelevant because whether or not Excerpta Medica actually received the stock is of no consequence. Under the agreement by which the data bank license was granted (Ex. 1), there was a specific obligation on the part of 3I to deliver the stock (as well as to repurchase it at $15 per share on a stated date), and that obligation was sufficient to establish the valuation.

(b) In the Amended Complaint, plaintiff states that the 46,666 shares held by Excerpta Medica were merely "stock rights" and were so characterized in 3I's 1972 financial statement. (Am. Complt. ¶ 121). This, however, is a complete misreading of that statement, a copy of which is attached hereto as Exhibit 7. As noted above, Excerpta Medica actually received the 46,666 shares. In addition, the 1972 footnote to the financial statement to which plaintiff refers speaks of a "right" which Excerpta Medica had <u>in addition</u> to the 46,666 shares, i.e., the right to require 3I to repurchase those shares:

> "The rights, previously granted to certain shareholders to require the Company to repurchase 46,666 shares of its Class A common stock have terminated during the year ended June 30, 1972."

Thus, the "right" to repurchase terminated in 1972, but the 46,666 shares issued to Excerpta Medica in 1969 remained as valid, outstanding shares. Nothing in the 1972 financial

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* Of course, even as to restrictions on transferability, Excerpta Medica had the right to require registration of all shares not repurchased by 3I at $15.00 per share.

statement contradicts the 1970 financial statement on this matter.

(c) As explained above, Von Eugen received $150,000 at the closing and a promise by 3I to pay an additional $150,000 within 180 days of the closing (Ex. 2). By a later amendment, Von Eugen was to receive 30,000 shares, which 3I was required to repurchase at $5.00 per share in exchange for the latter (Ex. 3). In the amended complaint, plaintiff charges that the debt to the finder of $150,000 was never reflected on the 3I balance sheet. (Am. Complt. ¶124). However, the amended agreement, dated June 15, 1970 (Ex. 3), had already satisfied the obligation to pay Von Eugen the additional $150,000. Thus, it would have been incorrect to reflect that $150,000 was due on the balance sheet as of June 30, 1970. Plaintiff, after much hemming and hawing, finally had to admit this ineluctable truth at his deposition (Tr. 464). At the deposition plaintiff came up with the unique excuse that the amended complaint was not referring to the balance sheet as of June 30, 1970 when it referred to the "balance sheet" in paragraph 125, but to the "running balance sheet" in 3I's books -- whatever that may be (Tr. 465-67).

(d) Plaintiff brazenly alleges in his complaint that Von Eugen only received $150,000 (which concededly he did receive) and 7,500 shares of the 3I stock. He bases this upon a deliberate misreading of the documents on file with the SEC. First, the amended complaint charges that the finder was never paid the balance of $150,000 due on April 27, 1970 (Am. Complt. ¶ 125), but, as noted above,

the agreement to issue the 30,000 shares to the finder replaced this cash. Second, plaintiff claims that these 30,000 shares were not issued to the finder and that all he received was "stock rights" for which he was given 7,500 shares in 1972 (Am. Complt. ¶¶ 127, 128). But the documents on file with the SEC show unequivocally that in addition to the 30,000 shares received in 1970, which the finder had substituted for the balance of his cash finder's fee, he received an additional 7,500 shares. The additional 7,500 shares were issued in exchange for his waiver of the right to have the 30,000 shares issued to him in 1970 registered by 3I or repurchased by it at $5.00 per share. Note 7 to the 1972 financial statements, filed in the 1972 10-K makes this point explicitly:

> "The Company has entered into an agreement with a stockholder to issue 7,500 shares of its Class A common stock in exchange for cancellation of the stockholder's right to require the Company to repurchase or register the 30,000 shares."

Consequently, it is beyond cavil that the amount paid by 3I as of June 30, 1970 was exactly as reflected in its 1970 financial statement: $150,000 in cash, 46,666 shares of 3I stock, which it was required to purchase at $15.00 per share, and 30,000 shares of 3I stock, which it was required to repurchase at $5.00 per share. In 1972 3I issued an additional 7,500 shares in exchange for the waiver of certain rights as set forth above.

(e) Finally, plaintiff has the temerity to allege that the data bank license was "worthless to defendant 3I Co. and in fiscal 1972, defendant 3I Co. wrote off

the $1,000,000.00 'cost' at a complete loss." Of course, the only claim against Main Lafrentz can relate to its opinion rendered on the 1970 financial statement, and, consequently, to state a claim against Main Lafrentz, plaintiff must contend that the data bank license was worthless in 1970. However, at his deposition, plaintiff stated that he is claiming that this data bank license was worthless in 1972 (when it was written off) (Tr. 488), and, perhaps as early as 1971. (Tr. 515-16) Consequently, leaving aside Main Lafrentz' qualification concerning the value of the data bank license in 1970, plaintiff has admitted that his claim that the license was worthless does not allege that it was worthless in 1970, the date of the Main Lafrentz qualified opinion.

27. Consequently, there is no merit whatever to plaintiff's contention that the Main Lafrentz report misstated anything with respect to the consideration for the acquisition of the data bank license. The acquisition cost of $1 million was stated on the books of 3I at that figure. The Main Lafrentz opinion called attention to the fact that the figure on the balance sheet stated by 3I was subject to the qualification shown in the Main Lafrentz opinion, and subject to the footnotes which clearly indicated that this figure might never be realized by the company. In short, any prospective investor was fully apprised of the method by which this data bank license had been recorded on the books of the company, and also knew, as pointed out above, that Main Lafrentz did not necessarily subscribe to its valuation.

28. Indeed, plaintiff's complaint against Main

Lafrentz is based on a complete misconception of the role of a certified public accountant, a misconception which must have been deliberate in light of the fact that plaintiff is, and has been, a certified public accountant for almost 20 years. The function of a certified public accountant is to render an opinion as to whether the financial condition of the company is fairly presented in its financial statement. Here, Main Lafrentz analyzed the 3I financial statement and qualified its opinion with regard to the value of the data bank license. It directed attention to the fact that the valuation by the company was predicated on the information set forth in the footnote and that the statement on the balance sheet was subject thereto and, in addition, subject to realization. An accountant can, and should, do no more than render his opinion. It is for the reasonable investor to read and be guided by that opinion.

29. This leads directly to plaintiff's next, and equally meritless, contention mentioned at his deposition, that Main Lafrentz should have refused to render any opinion regarding this financial statement. The reason given by plaintiff for this position is that the data bank license amounted to 62% of all the assets of the company (Tr. 528). However, plaintiff overlooks the fact that Main Lafrentz qualified its opinion with respect to this item, as well as the investments in affiliated companies amounting to $112,500. Any prospective investor could see for himself what percentage these assets bore to 3I's total assets. Thus, all relevant facts were disclosed: Every investor knew that

Main Lafrentz had qualified its opinion with respect to more than $1,000,000 of the assets on the balance sheet, and the total assets were only $1,647,219. Thus, any investor could make an informed decision on the basis of this full disclosure of the facts.

30. In addition, it should be noted that Lybrand, which is not a defendant in this action, succeeded Main Lafrentz as the auditors for 3I after the issuance of the financial statement for the 1970 fiscal year. An examination of the financial statement for 1971, and the opinion of Lybrand, shows that the data bank license acquired from Excerpta Medica was still valued on the books at $1 million in that fiscal year. A copy of that financial statement is attached hereto as Exhibit 8. Like Main Lafrentz, Lybrand qualified its opinion with respect to the value of the data bank license. Therefore, the position of Main Lafrentz that the company had adequately disclosed the facts with respect to this data bank license and that it was necessary to qualify the opinion with respect to the value of that license is corroborated by similar,independent action taken by Lybrand, its successor accountants.

31. The 1972 financial statement (Ex. 7) shows that the $1 million cost of this data bank license was charged to operations in that year as an extraordinary item because, "This amount was deemed not to be recoverable through future operations because of the losses sustained and the annual fee obligations under the present agreement." (Ex. 7, Note 5). It should be noted that the Main Lafrentz qualification was that the $1 million valuation of the data

bank license on the 1970 financial statement (Ex. 5) was "subject to the realization of carrying value of data bank license," i.e., subject to the ability of 3I to realize that $1 million value by amortizing it against profits from its operation. As of June 30, 1970, as disclosed in footnote 1 to the 3I financial statement (Ex. 5), 3I had just begun marketing its services in connection with the data bank licenses, had not realized any significant revenues from these services, and had not begun to amortize this $1,000,000 cost. It was not until 1972 that 3I determined that "this [$1,000,000] amount was deemed not to be recoverable through future operations." In other words, two years after the Main Lafrentz qualified opinion was issued, 3I, having been unsuccessful in marketing these services profitably, determined that the $1,000,000 cost would not be realized, or recovered, and wrote off the asset.

32. Consequently, it was the precise possibility foreseen by Main Lafrentz in issuing its qualification in 1970 which became a certainty in the 1972 fiscal year and caused 3I to write off the asset. The reason the $1 million was written off in 1972 was because it could not be recovered, or "realized" through future operations.

ACQUISITION OF SCIENTIFIC LITERATURE CORP.

33. Scientific Literature Corp. ("SLC") was, as of the end of the 1970 fiscal year, a wholly-owned subsidiary of 3I. SLC became a 3I subsidiary pursuant to an acquisition agreement dated April 25, 1969 between the defendants S. Kim Kessler and Geraldine Kessler ("the Kesslers"), who were the then major shareholders of SLC, and 3I, a copy of

which is attached hereto as Exhibit 9. In accordance with the provisions of that agreement the Kesslers were entitled to obtain from 3I as many as 44,800 additional shares of 3I stock, depending upon the earnings of SLC during the 1970 and 1971 fiscal years. The acquisition agreement had certain restrictions concerning the operations of SLC during those two fiscal years.

34. The agreement with the Kesslers provided that they were entitled to additional stock if the average "pre-tax earnings" of SLC in the 1970 and 1971 fiscal years exceeded $58,400. (Ex. 9, ¶ 15(b)). The parties agreed that in determining the "pre-tax earnings" of SLC "no allocation of general administrative expenses of 3I shall be made to Subsidiary [SLC], except as shall be directly attributable to Subsidiary's business as a wholly-owned subsidiary of 3I." (Ex. 9, ¶ 15(b)(iii)).

35. As the excerpt from the Main Lafrentz workpapers (attached hereto as Exhibit 10) demonstrates, during the 1970 fiscal year SLC's results of operations reflected a profit of $81,307 before taxes and allocation of indirect expenses. However, there was a charge from 3I to SLC of $82,362 for indirect general and administrative expenses for that fiscal year. Under the agreement with the Kesslers, this charge was not counted in determining their right to obtain additional 3I shares.

36. In order to remove some of the restrictions from the agreement between 3I and the Kesslers, on November 2, 1970, 3I amended its agreement with the Kesslers. A copy of that agreement is attached hereto as Exhibit 11. By that time, on the basis of the "pre-tax earnings" (as defined in

the agreement) (Ex. 9) of $81,307 during fiscal 1970, and the results of operations in the first quarter of the 1971 fiscal year, it appeared to 3I that SLC would earn sufficient amounts to provide the additional stock to the Kesslers allowed under the acquisition agreement. A new agreement was executed by which the Kesslers released 3I from certain restrictions regarding the operations of SLC, and 3I issued to the Kesslers the 44,800 shares of 3I stock provided under the acquisition agreement.

DISCLOSURES IN THE 3I FINANCIAL STATEMENTS CONCERNING SLC

37. Since the financial statement which appeared in the 1970 Annual Report, and which is the subject matter of the plaintiff's complaint against Main Lafrentz, contained only a consolidated balance sheet and a consolidated statement of operations, there was no separate statement for any of the 3I subsidiaries, including SLC. However, because the acquisition agreement between 3I and the Kesslers (Ex. 9) had been amended during that fiscal period, (Ex. 11) footnote 1 to the consolidated financial statement (Ex. 5) stated the amended terms of the acquisition agreement as follows:

> "On November 2, 1970, the Company amended the agreement whereby it acquired Scientific Literature Corporation (SLC), a wholly-owned subsidiary. The amended agreement released the Company from certain restrictions in regard to the operations of SLC and requires the Company to issue to the former shareholders 44,800 shares of Class A common stock which have been or could have been earned contingent upon earnings of SLC. These shares are reflected as outstanding in the accompanying financial statements. In the opinion of the Company, SLC will achieve the necessary earnings which would have entitled the sellers to receive these shares under the original agreement."

38. The only allegations made against Main Lafrentz regarding SLC is that SLC had sustained a net loss for the year ended June 30, 1970 (Am. Complt., ¶ 148) and that Main Lafrentz omitted the fact that SLC had sustained a net loss for that period. (Am. Complt., ¶ 150). These allegations are as frivolous as plaintiff's prior allegations regarding the supposed inaccuracy of the 3I financial statements.

39. First, it must be noted that in truth SLC had a pre-tax profit of $81,307 before allocation of indirect general and administrative expenses of 3I. This was the figure used to determine the profitability of SLC in the agreement between 3I and the Kesslers (Ex. 9). The only loss in SLC for the period came by means of an allocation of indirect general and administrative expenses to 3I of $82,362, and this is a not unusual method employed to minimize state income taxes. Moreover, even after this internal calculation SLC had a loss of only $1,055 for the 1970 fiscal year. Plaintiff gives no explanation as to why this loss should have been stated in the consolidated financial statements, especially when the loss was caused by an intercompany charge, which does not appear in the consolidated figures.

40. In any event, even if the allocation of indirect costs is taken into account, there was no reason for 3I to state that there was a loss of $1,055 by SLC during the fiscal year 1970, and there can be no liability to Main

Lafrentz concerning this item:

(a) Main Lafrentz examined the results of operations of SLC and rendered an opinion solely for inclusion in the consolidated financial report of 3I and subsidiaries. Main Lafrentz did not issue a separate report concerning the financial condition of SLC.

(b) The loss of only $1,055 was hardly material, especially in light of the consolidated net loss for 3I during that fiscal year of $555,577. The so-called "undisclosed" loss in SLC amounted to less than 2/10ths of 1% of the entire net loss actually disclosed in the financial statement.

(c) Although the undisputed facts demonstrate that the internal administrative charge was not counted for purposes of determining whether or not the Kesslers were entitled to additional 3I shares under the original acquisition agreement, the loss of only $1,055, even if prior to that internal adjustment, would not have precluded the execution of a new agreement with the Kesslers. If, contrary to the facts, there had been a loss of $1,055, as defined in the agreement with the Kesslers, the loss was minor; it could have been made up in the next fiscal year since the payment of the additional shares was based on the average "pre-tax earnings" for the two fiscal years. Stockholders were informed in footnote 1 to the 3I financial statements that a new agreement had been written, and that it was management's opinion that "SLC will achieve the necessary earnings which would have entitled the sellers to receive these shares under the original agreement." Any shareholder

or prospective investor who wanted further information could take up the matter with management; every shareholder knew he was relying solely on management's opinion.

(d) The net loss of $1,055 was disclosed on Schedules III and XVII of 3I's Form 10-K for the fiscal year ended June 30, 1970 filed with the SEC. This factor alone belies any claim of intent to defraud.

41. In summary, plaintiff suggests no reason why this loss, if it be deemed a loss at all, should have been disclosed in the consolidated financial statements. It was a miniscule loss against the enormous consolidated loss actually disclosed. And it had no relevance to the agreement with the Kesslers, because under the terms of that agreement, SLC showed a substantial profit and not a loss for that fiscal year.

ADDITIONAL ALLEGATIONS

42. It should be noted that the amended complaint also charges Main Lafrentz with aiding and abetting certain of the other defendants in violating the securities laws. The complaint, however, does not elucidate the nature of this alleged "aiding and abetting." Since Main Lafrentz' function in connection with 3I was the rendering of opinions on its consolidated financial statements for the fiscal years ended June 30, 1969 and 1970, it appears that plaintiff's claim that Main Lafrentz aided and abetted others in violation of the securities laws is intended to merely rehash the same specious arguments refuted point by point above.

43. At his deposition plaintiff refused to

explain the nature of the claims in the complaint that Main Lafrentz aided and abetted others in violating the securities laws on the ground that this was his "work product" as an attorney. (Tr. 630-32) Needless to say, this is a complicating factor which arises solely because plaintiff claims that he is entitled to be both the class representative and the attorney for the class; but leaving aside that issue, plaintiff's refusal to explain the nature of these allegations should not prevent this Court from granting the motion for summary judgment to which Main Lafrentz is justly entitled.

44. It has been demonstrated beyond doubt that the claims of this plaintiff against Main Lafrentz were merely last-minute afterthoughts inserted several months after the action had been commenced against other parties in disregard of the facts which plaintiff ascertained from the filed papers which he examined at the S.E.C. Surely, as a practicing lawyer for many years and a certified public accountant, plaintiff is well able to read financial statements and materials filed with the Securities and Exchange Commission. Before he brought this lawsuit plaintiff well knew, for instance, that the loss of SLC for the fiscal year 1970, which he claims Main Lafrentz omitted to state, was a loss of only $1,055.

45. Similarly, as a certified public accountant and experienced attorney who seeks to represent a class, plaintiff was aware that Main Lafrentz had qualified its opinion for the fiscal year ended June 30, 1970 and issued the opinion subject to the realization of the net asset value of the data bank acquired. Plaintiff knew that the financial statement was a financial statement of 3I, and that Main Lafrentz, by qualifying its opinion had declined

to attest to the value of the data bank license as set forth on the 3I books. Every investor was forewarned that there was a possibility that this million dollar asset would not be realized -- and certainly plaintiff, as a certified public accountant, was so forewarned. When, two years later, after Lybrand had issued a similar qualified opinion in the intervening year, 3I determined that it would not be able to realize this value, precisely the contingency against which Main Lafrentz had warned, this asset was written off. Again, as a certified public accountant, plaintiff knew that the reason that the value of the data bank license was written off in fiscal 1972, as stated in the footnotes for that year, was the value of this asset could not be realized, or recovered, through the generation of profits.

46. It is evident, therefore, from the foregoing that naming Main Lafrentz as a defendant in this action was without justification and that summary judgment at this time is the only way to protect Main Lafrentz from the considerable burden and expense it is being subjected to as a result of this unwarranted litigation. There is no merit to plaintiff's claim, and the motion should be granted in all respects.

s/
Milton Kunen

Sworn to before me this
1st day of November, 1973.

s/

ALLAN M. PEPPER
NOTARY PUBLIC, State of New York
No. 41-3059195
Qualified in Queens County
Commission Expires March 30, 1974

AFFIDAVIT OF FRANK G. WARBURTON IN SUPPORT OF SAID MOTION. DATED NOVEMBER 1, 1973

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

ROBERT R. FELTON, :

Plaintiff, :

-against- : 73 Civ. 2200 DBB

WALSTON AND CO., INC., et al. :

Defendants. :

----------x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

FRANK G. WARBURTON, being duly sworn, deposes and says:

1. I am a certified public accountant and am familiar with the audit conducted by Main Lafrentz & Co. ("Main Lafrentz") of 3I Company/Information Interscience Incorporated ("3I") for the fiscal year ended June 1970. I am connected with the Philadelphia office of Main Lafrentz. The audit was conducted through that office, and I was the partner in charge of said audit.

2. Attached hereto as Exhibit 10 is a copy of a work paper, based upon the books and records of the company, prepared by Main Lafrentz in connection with the above-mentioned audit. This exhibit reflects that the results of operations for the fiscal year ended June 30, 1970 of Scientific Literature Corporation ("SLC"), a wholly-owned subsidiary of 3I was a profit of $81,307 before taxes and indirect general and administrative expenses. It also reflects that 3I charged SLC $82,362 for indirect general and

administrative expenses during that fiscal year. This charge is not taken into account in the consolidated statement of operations of 3I and subsidiaries, the only statement of operations upon which Main Lafrentz issued any opinion for the fiscal year ended June 30, 1970.

Frank G. Warburton

FRANK G. WARBURTON

Sworn to before me this
1st day of November, 1973.

Allan M. Pepper

Notary Public

ALLAN M. PEPPER
NOTARY PUBLIC, State of New York
No. 41-3030195
Qualified in Queens County
Commission Expires March 30, 1974

EXHIBIT 10 ANNEXED TO SAID AFFIDAVIT - WORK SHEET
CONSOLIDATING PROFIT AND LOSS STATEMENT DATED
JUNE 30, 1970

258a

PREPARED BY [illegible]
DATE 11-4-70

CLIENT No. 8968[illegible]

[redacted]

Consolidating PROFIT & LOSS STATEMENT
6-30-70

	[illegible]	T.I.S.B.	Sc. Ltd.	(y-dan)	TOTAL	CONSOLIDATION ADJUSTMENTS DR	CONSOLIDATION ELIMINATIONS CR	6-30-70 CONSOLIDATED TOTALS
SALES	[illegible]	[illegible]	[illegible]		[illegible]		(2) 3000	[illegible]
COST OF SALES	[illegible]	[illegible]	[illegible]		[illegible]		(2) 7237	1259821
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]			578213
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]			[illegible]
[illegible]	[illegible]	[illegible]			[illegible]			[illegible]
[illegible]								
[illegible]								
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]			[illegible]
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	(3) 1644		[illegible]
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]		(4) (5) 8554 1644	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]			[illegible]
[illegible]								

TABLE OF CONTENTS TO
AGREEMENT AND PLAN OF REORGANIZATION DATED APRIL 1969

AGREEMENT AND PLAN OF REORGANIZATION dated April , 1969, by and among 3i Company-Information Interscience Incorporated ("3i"), Scientific Literature Corporation ("Subsidiary"), Scientific Literature Consultants, Inc. ("Corporation"), and S. Sim and Geraldine Kessler ("Kessler").

TABLE OF CONTENTS

Paragraph		Page
1.	The Plan of Merger	2
2.	Stock to be Delivered by Subsidiary	2
3.	Additional Stock to be Issued to Shareholders of Corporation	2
4.	Representations, Warranties, Covenants and Agreements of Corporation and Kessler	
	(a) Corporate Status and Authority; Outstanding Stock.	3
	(b) Financial Statements	4
	(c) Tax Returns	4
	(d) Subsidiaries and Participation in Joint Ventures	4
	(e) Real Estate	4
	(f) Personal Property	5
	(g) Tradenames and Trademarks	5
	(h) Insurance	6
	(i) Assets and Liabilities	6
	(j) Contracts, Leases, Agreements and Other Commitments	7
	(k) Labor and Employment Contracts and Employee Benefit Programs	8
	(l) Litigation	9
	(m) Compliance with Law and Other Regulations	9
	(n) Agreement Not in Breach of Other Instruments	10
	(o) No Payments to Shareholders or Others	10
	(p) Filing of Tax Returns	11
	(q) Action in the Ordinary Course of Business	11
	(r) No Adverse Change	12
	(s) Statements and Other Documents Not Misleading	12
	(t) Employment Agreement	13
	(u) Management Agreement	13
	(v) Contracts of MLI	13
	(w) Transactions Between Corporation and MLI	14
	(x) Liabilities of Corporation Arising Out of Agreements or Transactions with MLI	15
5.	Representations, Warranties, and Agreements of 3i	15
	(a) Corporate Status and Authority	15
	(b) Agreement Not in Breach of Other Instruments	16
	(c) Stock Validly Issued	16
	(d) No Material Adverse Change	16
	(e) Financial Statements	17
	(f) No Additional Warranties by 3i	17
6.	Continuation and Survival of Representations and Warranties	18
7.	Additional Covenants Before Closing	18
	(a) 3i Inspection Rights	18
	(b) Conduct of Business	18
8.	Conditions Precedent to 3i's Obligation to Close	20
9.	Conditions Precedent to Corporation or Kessler's Obligation to Close	22

Paragraph		Page
10.	Closing	23
	(a) Determination of Closing Date	23
	(b) Deliveries by Corporation at Closing	24
	(c) Deliveries by 3i at Closing	25
11.	Indemnification of 3i	27
	(a) Basic Provision	27
	(b) Definition of "Post-Closing Deficiencies"	27
	(c) Procedures for Establishment of Post-Closing Deficiencies	28
	(d) Payment of Post-Closing Deficiencies	29
12.	Securities Act Compliance	29
	(a) No Distribution in Violation of Securities Act	29
	(b) Registration Rights of Kessler	30
	(i) Rights of Kessler to Participate in a 3i Registration	30
	(ii) Information	31
	(iii) Further Rights of Kessler	31
13.	Pooling of Interests; Further Restrictions on Stock to be Received by Kessler	33
14.	Covenants and Agreements of Corporation after Closing	35
	(a) Creation of Escrow Fund	35
	(b) Rights of Kessler in Shares Held in Escrow	35
	(c) Merger of Corporation	36
15.	Additional Consideration Based on Subsidiary's Earnings	36
	(a) Performance of Contracts	36
	(b) Definition of "Pre-Tax Earnings of Subsidiary"	39
	(c) Payment of Additional Consideration by 3i	41
	(d) Value of 3i Stock	41
	(e) Shares Held in Escrow	41
	(f) Acquisition of Subsidiary - Escrow of Stock	42
16.	Further Assurances	44
17.	Restrictive Covenant	44
	(a) Duration and Extent of Restriction	44
	(b) Remedies for Breach	45
	(c) Extension of Restriction	46
18.	No Brokerage Commissions	46
	(a) Representation and Warranty of Corporation to 3i	46
	(b) Representation and Warranty of 3i to Corporation	46
19.	Notices	47
20.	General	48
	(a) Successors and Assigns	48
	(b) Entire Agreement	48
	(c) Indulgences Not Waivers	48
	(d) Controlling Law	48
	(e) Costs	48
	(f) Titles Not to Affect Interpretation	49
	(g) Arbitration	49
	(h) Gender, etc.	49
Signatures		50

List of Exhibits

Exhibits

agree to execute any and all necessary agreements with Escrow Agent to make provision for and to evidence the escrow arrangements set forth herein.

(c) Merger of Corporation. All shares in escrow, upon the merger of Corporation into Subsidiary, shall be re-registered in the name of S. Sim Kessler, as attorney-in-fact for all shareholders of Corporation and redeposited in escrow, endorsed in blank or with irrevocable stock powers attached, endorsed in blank, with the customary signature guarantees required by Escrow Agent and held pursuant to the terms of this Agreement until the termination of such escrow fund. Thereafter such shares shall be delivered or transferred as provided in Paragraph 15 hereof.

15. Additional Consideration Based on Subsidiary's Earnings.

(a) Performance of Contracts. After the Closing provided for herein and until June 30, 1971:

(i) Subject to the terms of this paragraph 15, Subsidiary shall have the right to perform each United States Federal government contract obtained by 3i or any of its other subsidiaries or affiliates if, but only if:

(A) such contract involves abstracting, indexing, scanning or any variations thereof; and

(B) such contract requires any of the above operations to be performed on scientific or medical literature; and

(C) such contract involves only an insignificant amount of data processing and does not involve computer orientation or the use of computerized techniques; and

(D) Subsidiary holds the necessary security clearance for performance of the contract at the time it is awarded; and

(E) Subsidiary has or can obtain the necessary personnel both in number and kind to fully perform such contract.

To the extent of Subsidiary's performance of contracts meeting the above conditions, the earnings and expenses with respect to any such contract shall accrue to Subsidiary.

(ii) All contracts presently being performed by 3i and all awards of contracts presently being applied for by 3i which would otherwise be includible within Subparagraph 15(a)(i) above shall be specifically excluded therefrom and no part of the earnings of such contracts shall accrue to Subsidiary.

(iii) All extensions or renewals of contracts presently being performed or applied for by 3i which would otherwise be includible within Subparagraph 15(a)(i) shall be so included.

(iv) All contracts now being performed or applied for by companies which 3i, its other subsidiaries or affiliates, may in any manner acquire at any time, and all extensions and renewals of such contracts which would otherwise

be includible in Subparagraph 15(a)(i) shall be specifically exempted therefrom and no part of the earnings of such contracts, extensions or renewals shall accrue to Subsidiary.

(v) Both 3i, including its other subsidiaries and affiliates, and Subsidiary shall have the right to request the other to perform reasonable services in their respective fields for the other and such work shall be compensated for at cost, including general and administrative expenses, plus six percent (6%). "Reasonable services", as described herein, shall not include such services, which if performed by 3i at the request of Subsidiary, would allow Subsidiary to obtain and perform contracts not otherwise includible in Subparagraph 15(a)(i) above.

(vi) Any cost savings benefiting 3i, its other subsidiaries or affiliates, and Subsidiary on account of any joint operations performed by them on any contract or other project shall be allocated as the parties to the joint operations may agree or, in the absence of any agreement, as the independent certified public accountants of 3i shall determine, and such determination shall be final and binding upon all of the parties affected.

(vii) Any monies advanced by 3i to Subsidiary, for working capital or otherwise, shall be advanced at an interest rate of one percent (1%) above the prime rate then being charged by The Fidelity Bank of Philadelphia. Subsidiary shall pay interest to 3i at such rate on 125% of the sum actually borrowed by Subsidiary from 3i.

(viii) The same rights which are given to Subsidiary in Subparagraph 15(a)(i) to perform all federal

government contracts obtained by 3i, its other subsidiaries or affiliates, shall be given by Subsidiary to 3i, its other subsidiaries or affiliates, with respect to all non-government contracts.

(b) Definition of "Pre-Tax Earnings of Subsidiary". As used in this paragraph, "Pre-Tax Earnings of Subsidiary" shall mean the earnings of Subsidiary for each of the fiscal years 1970 and 1971 in excess of $58,400, and shall be computed by such independent certified public accountants as are regularly employed by 3i at the time such determination is to be made, in accordance with generally accepted accounting principles consistently applied in a manner which will fully and accurately present the results of the operations of Subsidiary for the fiscal years indicated. In determining such "Pre-Tax Earnings", said accountants' computations will adhere to the following:

(i) Subsidiary's operations shall be deemed to be the business operations of the Corporation as the same existed the day before the Closing, and any extensions of such business operations which may subsequently be made by Subsidiary and 3i. If for any reason Subsidiary's operations should not be carried on in separate corporate form, 3i will nonetheless continue to account for Subsidiary's operations as a single, separate entity in such manner as to facilitate the computations required by this paragraph.

(ii) No allocation of general administrative cost and expenses of 3i shall be made to Subsidiary, except such as shall be directly attributable to the operation of Subsidiary's business as a wholly-owned subsidiary of 3i;

(iii) All transactions and business dealings between Subsidiary and 3i and between Subsidiary and any other subsidiary or any division of 3i shall be accounted for at the rates normally charged to third parties for similar work or services;

(iv) If any cash is either taken out of the Subsidiary's operation or contributed by Subsidiary to 3i or its other subsidiaries, interest shall be charged thereon to the appropriate party at the prime rate then being charged by The Fidelity Bank, Philadelphia, Pennsylvania, on corporate loans;

(v) Subsidiary's assets will be depreciated on a straight line basis, regardless of the manner in which depreciation is treated for tax purposes;

(vi) The basis of Subsidiary's assets will not be stepped up for book purposes, regardless of whether such assets are stepped up for federal tax purposes;

(vii) The salary and all other benefits paid to S. Sim Kessler pursuant to his employment contract attached hereto as Exhibit "F" and to all other employees of Subsidiary shall be deducted as part of the cost of Subsidiary's business operations;

(viii) Pre-tax earnings shall be computed after payment or provision for payment of all taxes, Federal, state and local, has been made except for the payment of Federal Income Taxes.

All determinations made by 3i's independent certified public accountants in the computation of Pre-tax earnings

(c) Payment of Additional Consideration by 3i. On or before October 31, 1971, Subsidiary will cause to be issued and/or transferred to Kessler and the other shareholders of Corporation, pro rata, subject to the provisions of Subparagraph 15(e) below, that number of additional shares of 3i Stock (valued as provided in Subparagraph 15(d) below) which shall be equal to ten (10) times the average Pre-Tax Earnings of Subsidiary for the fiscal years 1970 and 1971, as determined by 3i's accountants. Notwithstanding the above, in no event shall 3i transfer to the former shareholders of Corporation, pursuant thereto more than 44,800 additional shares of 3i Stock (not counting the shares held in escrow), unless there has occurred, in such period, a stock split, subdivision, stock dividend or recapitalization affecting the 3i Stock, in which event the number of shares issuable hereunder shall be proportionately adjusted to make full allowance for such stock split, subdivision, stock dividend or recapitalization.

(d) Value of 3i Stock. The 3i Stock to be issued and delivered to Kessler and Corporation's other shareholders pursuant to Subparagraph 15(c) above shall be valued at the average closing price of such stock on the national securities exchange on which it is traded, or if it is not so traded, at the average of the high Bid and low Asked price of the 3i Stock on the over-the-counter market (as determined by the average of all such prices quoted in the "pink sheets") in the twenty (20) trading sessions immediately prior to the date of their delivery hereunder during which transactions in the 3i Stock occurred in such market.

(e) Shares Held in Escrow. 3i shall have no obligation to issue and deliver to Kessler or other share-

holders of Corporation additional shares of 3i Stock pursuant to Subparagraph 15(c) above unless and until they are entitled to receive thereunder, and Escrow Agent has therefore duly redelivered to them, all of the shares held in escrow; however such shares as are redelivered from escrow by the Escrow Agent to Kessler or other shareholders of Corporation shall not be counted against the specified maximum for Additional Shares of 3i Stock issuable, contained in Subparagraph 15(c). In the event that no Additional Shares are issuable under the terms of Subparagraph 15(c) or that the number of shares to be issued thereunder is less than the total number of shares held in escrow, such shares, or the part not to be redelivered, shall be transferred by the Escrow Agent to 3i, and Kessler and the other shareholders of Corporation shall have no further rights with regard to such shares, including without limitation any rights to possession or ownership, the right to vote such shares and to receive dividends thereon. In such case, 3i shall have no obligation to issue any further shares to Kessler or Corporation's other shareholders pursuant hereto.

(f) Acquisition of Subsidiary - Escrow of Stock. If, prior to the time Kessler and Corporation's other shareholders receive any additional 3i Stock to which they may be entitled hereunder, 3i determines to merge into, consolidate with or otherwise enter into a plan of reorganization with any other corporation, or proposes a plan of recapitalization pursuant to which Kessler and the Corporation's other shareholders may receive additional payments of 3i Stock in the form of securities of such other corporation, or securities of 3i other than 3i Stock, 3i will not consummate such reorganization or recapitalization without the consent of Kessler

without (a) first having obtained a ruling of the Internal Revenue Service or an opinion, in form and substance satisfactory to Kessler, or counsel satisfactory to Kessler, to the effect that the receipt by the Corporation's shareholders of such securities will not be a taxable transaction to them, or (b) first deliver to Kessler certificates for the maximum number of shares of 3i Stock as set forth in Subparagraph 15(c) which could conceivably be due to all of Corporation's shareholders under this Agreement, but not theretofore issued and delivered to them, whereupon such certificates shall be delivered by Kessler to the Escrow Agent, duly endorsed in blank by Kessler or accompanied by irrevocable stock powers endorsed in blank, with the customary signature guarantees required by Escrow Agent, such shares of 3i Stock to be held by the Escrow Agent in escrow and delivered to the Corporation's shareholders at such time and in such number as provided for by Subparagraph 15(c) above, and thereafter the balance of such shares to 3i.

In the event that securities of such other corporation are substituted for the shares of 3i Stock, the number of shares to be delivered to the Corporation's shareholders by Escrow Agent shall be determined by and based upon the rate of exchange of such shares for shares of 3i Stock as provided in the plan of merger or reorganization or the recapitalization. If any such shares of 3i Stock (or any substituted stock of such other corporation) are placed in escrow, the Corporation's shareholders shall have the same rights with regard to such stock as provided for in Subparagraphs 14(b), 14(c) and 15(c) above.

10/23/

SECOND AMENDMENT TO SAID AGREEMENT pp. 1 and 2 269a

SECOND AMENDMENT

THIS SECOND AMENDMENT made this 2nd day of November ~~October~~, 1970 to an Agreement and Plan of Reorganization, dated April 25, 1969 and amended on October 21, 1969 (hereinafter called the "Agreement"), by and among 3i COMPANY - INFORMATION INTERSCIENCE INCORPORATED, a Pennsylvania corporation (therein and hereinafter called "3i"), SCIENTIFIC LITERATURE CORPORATION, a Pennsylvania corporation and a wholly owned subsidiary of 3i (therein and hereinafter called "Subsidiary"), SCIENTIFIC LITERATURE CONSULTANTS, INC., a Pennsylvania corporation (therein and hereinafter called "Corporation") and S. SIM AND GERALDINE KESSLER (therein and hereinafter individually and collectively called "Kessler").

W I T N E S S E T H :

Pursuant to the terms of the Agreement, Corporation was merged with and into Subsidiary. Subsidiary has succeeded to all of the business and activities of Corporation and has continued to be managed by Kessler since the date of such merger.

32,000 shares of the Common Stock, Class A, par value $.10 per share of 3i (hereinafter called "3i Stock") were issued to the shareholders of Corporation at the closing under the Agreement and 12,800 shares were held in an escrow fund pending Subsidiary's achieving certain earnings during the period of its operations from the date of the merger through June 30, 1971. In addition, the shareholders of Corporation might become entitled to receive, under the terms of Paragraph 15 of the Agreement, up to 44,800 additional shares of 3i Stock dependent upon Subsidiary's earning record during that same period.

The operations of Subsidiary from the date of the merger up until the date hereof have satisfied the parties that Subsidiary will achieve the necessary earnings to entitle the former shareholders of Corporation to receive the maximum number of additional shares and that it is now in the best busine interests of the parties to combine the operations of Subsidiary with some of those of 3i. The parties therefore desire to terminate the escrow of the 12,800 shares and to issue all of the additional 44,800 shares to which former shareholders of Corporation might become entitled under the terms of the Agreement simultaneously with the execution of this Amendment, provided, however, that certain restrictions will be placed upon the transfer of the shares issued to comply with pooling of interest requirements, as contained in Paragraph 13 of the Agreement, and for other purposes of the parties.

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants contained herein and in the Agreement, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Amendment to Paragraph 13.

(a) Amendment of Provisions. Paragraph 13 of the Agreement shall hereby be amended in the following respects:

(i) The legend on the share certificates for 1,188 and 4,806 shares respectively, described in subparagraphs 13(a)(iii) and 13(b)(i) restricting their transfer prior to May 1, 1971, shall be removed and of no further force or effect;

(ii) The legend on the share certificates for 4,806 shares described in subparagraph 13(b)(ii) restricting their transfer prior to January 1, 1972 shall be modified

3i COMPANY / INFORMATION INTERSCIENCE INCORPORATED AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

June 30, 1972 and 1971

ASSETS

	1972	1971
Current assets:		
Cash (including $60,000 certificate of deposit in 1972)	$135,840	$ 20,190
Cash (certificate of deposit) used for business acquisition in August, 1972 (Note 10)	190,000	–
Notes and accounts receivable including amounts due from affiliated companies at June 30, 1972 and 1971 of $11,422 and $12,397 respectively	181,392	131,395
Other current assets	9,195	18,774
Total current assets	516,427	170,359
Investments, at cost and advances to affiliated companies (Note 3)	95,000	115,000
Fixed assets, at cost, less accumulated depreciation and amortization of $103,144 and $61,436 respectively (Note 4)	160,059	85,949
Data bank licenses, at cost, less accumulated amortization of $16,454 and $8,303 respectively (Note 5)	8,152	1,016,303
Other assets	26,354	16,230
	$805,992	$1,403,841

LIABILITIES AND STOCKHOLDERS' EQUITY

Current liabilities:		
Current installments on long-term debt (Note 6)	$ 55,000	$ 108,537
Accounts payable	82,095	113,221
Accrued liabilities	55,832	55,874
Total current liabilities	192,927	277,632
Long-term debt (Note 6)	453,174	205,896
Contingencies and commitments (Note 7)		
Stockholders' equity (Notes 5, 8 and 10):		
Common stock Class A, one vote per share; par value $.10 per share; authorized 3,000,000 shares; 1972, 2,485,916 shares issued less 25,000 shares held in treasury at no cost; outstanding 2,460,916 shares; 1971 issued and outstanding 1,571,770 shares	248,592	157,177
Common stock, Class B, six votes per share; par value $.10 per share; authorized 300,000 shares; 1971 issued and outstanding 103,475 shares	–	10,348
Capital in excess of par value	7,196,086	2,753,024
Deficit	(7,284,787)	(2,000,236)
	159,891	920,313
	$ 805,992	$1,403,841

The accompanying notes are an integral part of the financial statements.

3 I CO. CONSOLIDATED STATEMENT OF LOSS AND DEFICIT FOR YEARS ENDING JUNE 30, 1972 and 1971

CONSOLIDATED STATEMENT OF LOSS AND DEFICIT

for the years ended June 30, 1972 and 1971

	1972	1971
Revenues	$ 637,243	$1,052,657
Cost and expenses:		
Cost of revenues	829,275	975,650
Selling and administrative expenses	625,886	479,861
	1,455,161	1,455,511
Data bank system development costs	–	178,209
	1,455,161	1,633,720
Operating loss before amortization of intangible assets attributable to business acquisitions	817,918	581,063
Amortization of intangible assets attributable to business acquisitions	163,293	–
Loss before extraordinary items	981,211	581,063
Extraordinary items:		
Costs of business acquisitions attributable to intangible assets (Note 2)	3,303,340	–
Cost of investment in data bank license (Note 5)	1,000,000	–
Gain on sale of wholly-owned subsidiaries (Note 2)	–	(37,276)
Loss	5,284,551	543,787
Deficit, beginning of year	2,000,236	1,456,449
Deficit, end of year	$7,284,787	$2,000,236
Loss per share of common stock (average shares outstanding) (Note 8):		
Loss before extraordinary items	$ .45	$ .35
Extraordinary items	1.97	(.02)
Loss	$ 2.42	$ .33

CONSOLIDATED STATEMENT OF CAPITAL IN EXCESS OF PAR VALUE

for the years ended June 30, 1972 and 1971

	1972	1971
Balance, beginning of year	$2,753,024	$2,649,274
Increase arising from transactions in common stock, Class A:		
Issued in connection with acquisition agreements; 367,671 shares	3,621,840	–
Sold, net of related expenses in 1972 of $25,415; 362,500 and 25,000 shares respectively	663,335	103,750
Issued in connection with options and warrants exercised; 25,500 shares	53,700	–
Conversion of notes payable; 50,000 shares	95,000	–
Issued in connection with settlement of litigation; 5,000 shares	9,187	–
Balance, end of year	$7,196,086	$2,753,024

CONSOLIDATED STATEMENT OF CHANGES IN FINANCIAL POSITION

for the years ended June 30, 1972 and 1971

	1972	1971
Use of Working Capital:		
Loss before extraordinary items	$ 981,211	$ 581,063
Items not requiring working capital:		
Amortization of intangible assets attributable to business acquisitions	(163,293)	–
Depreciation and amortization	(53,286)	(31,803)
Common stock, Class A issued in connection with settlement of litigation	(9,687)	–
Working capital used in operations before extraordinary items	754,945	549,260
Extraordinary items requiring or (providing) working capital:		
Gain on sale of wholly-owned subsidiaries	–	(37,276)
Working capital used in operations	754,945	511,984
Cost of intangible assets attributable to business acquisitions	3,466,633	–
Decrease in long-term debt	41,524	–
Additions to fixed assets	115,818	5,978
Advances to affiliated companies	–	2,500
Working capital used	4,378,920	520,462
Source of Working Capital:		
Value of stock issued for business combinations	3,658,607	–
Proceeds from sale of common stock, Class A, net of expenses and exercise of stock options and warrants	755,835	106,250
Proceeds from issuance of notes payable subsequently converted into common stock, Class A	100,000	–
Increase in long-term debt	288,802	205,896
Other, net	6,449	9,956
Working capital provided	4,809,693	322,102
Increase (decrease) in Working Capital	$ 430,773	$ (198,360)
Components of Changes in Working Capital:		
Increase (decrease) in current assets:		
Cash	305,650	(16,552)
Accounts receivable	49,997	(198,891)
Other current assets	(9,579)	5,346
Decrease (increase) in current liabilities:		
Current installments on long-term debt	53,537	(108,537)
Accounts payable and accrued liabilities	31,168	120,274
Increase (decrease) in Working Capital	$ 430,773	$ (198,360)

	June 30,	
	1972	1971
Current assets	$ 516,427	$ 170,359
Current liabilities	192,927	277,632
Working capital (deficiency)	$ 323,500	$ (107,273)

* 1971 Reclassified for comparative purposes.

The accompanying notes are an integral part of the financial statements.

3i COMPANY/INFORMATION INTERSCIENCE INCORPORATED

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Operations:

The principal operations of the Company for the year ended June 30, 1972 related to providing computer based information services from data banks, abstracting and indexing, microfilming and data processing services. In addition, in August, 1972, the Company acquired all the outstanding stock of the Maxima Wood Systems Corporation which designs, develops and implements systems in support of the information processing needs of government and industry (see Note 10 to consolidated financial statements).

During the current year, the Company sustained an operating loss. As a result, management is evaluating the profitability and long-term growth of the services provided by the Company. As part of this evaluation, management has determined that certain costs will not be recoverable through future operations and, therefore, has charged these costs to current operations as extraordinary items (see notes 2 and 5 to consolidated financial statements).

The Company has completed certain financing arrangements subsequent to June 30, 1972 (see note 10 to consolidated financial statements). This financing was required for the continuance of operations and, in management's belief, these financing arrangements will satisfy the Company's operating requirements for the year ending June 30, 1973.

2. Principles of Consolidation:

The consolidated financial statements include the accounts of the Company and its subsidiaries.

The Company acquired substantially all of the business and assets of Information Company of America and Information Corporation of America (ICA) in July, 1971 and American Micromation Industries, Inc. (AMI), in November, 1971, in exchange for 244,000 and 123,621 shares of Class A common stock, respectively. The Company had a 29% ownership interest in AMI prior to acquisition.

These acquisitions were accounted for by the purchase method and the results of their respective operations are included in the consolidated financial statements from the dates of acquisition. The value assigned to the common stock issued to the stockholders of ICA and AMI was $3,053,857 and $604,750. The cost of these acquisitions in excess of net tangible assets acquired was $2,960,904 and $505,729 respectively.

The value assigned to the ICA acquisition was determined by management of the Company by valuing the Class A common stock issued based upon the average market price of $17.38 during the period of negotiation (April through June 1971). Management valued 107,422 shares, which were available for sale within 90 days after the acquisition, at the average market price of $17.38 and valued 136,578 shares, which were restricted by agreement or by Securities and Exchange Commission regulations, at a discount of 50% from the aforementioned market price. The value assigned to the AMI acquisition of $604,750 was in accordance with the acquisition agreement. The Company established an initial amortization period of twenty years for these amounts of intangible assets. The amount of this amortization charged to operations for the year ended June 30, 1972 was $163,293.

In the opinion of management, the value assigned to these acquired intangible assets is deemed not to be recoverable through future operations. A loss of $3,233,343, net of tax credits of $[illegible], has been reflected as an extraordinary item.

[illegible] the Company has entered into an [illegible] July 1, 1973 the [illegible] the Company [illegible] of the [illegible] common stock [illegible] the Company has [illegible]

	Years Ended June 30,	
	1972	1971
Revenues	$ 659,488	$1,502,382
Loss before extraordinary items	$1,014,747	$ 916,187
Loss per share before extraordinary items	$ .46	$ .45

During the year ended June 30, 1971 the Company sold two of its subsidiaries, Trenton-Nassau Service Bureau (T.N.S.B., Inc.) and Systan, Inc. The results of operations of T.N.S.B., Inc. have been included in the consolidated statement of loss to March 31, 1971, the date of sale. T.N.S.B., Inc. contributed $204,000 to consolidated revenues and comprised $126,000 of the consolidated loss before extraordinary item, including $32,000 of expenses allocated to T.N.S.B., Inc. by the Company, for the year ended June 30, 1971. The Company had discontinued the operations of Systan, Inc. during the year ended June 30, 1970.

3. Affiliated Companies:

The investment, at cost, of $95,000 at June 30, 1972 represents an interest of approximately 27% in Datapro Research Corporation (Datapro). During the year, a former officer contributed 25,000 shares of Datapro common stock to the Company. This contributed stock was recorded at no value on the books of account (see note 8 to consolidated financial statements).

Datapro had net income (unaudited) of $62,000 for the six month period ended June 30, 1972. Due to prior period operating losses, Datapro had a deficiency in stockholder's equity of $109,000 at June 30, 1972. In the opinion of management, the cost of this investment fairly states its value (see note 10 to consolidated financial statements for assignment of the ownership interest as collateral under financing arrangements subsequent to June 30, 1972).

In November, 1971, the Company acquired the business and assets of American Micromation Industries, Inc., an affiliated company as of June 30, 1971 (see note 2 to consolidated financial statements).

4. Fixed Assets and Depreciation and Amortization Policy:

The Company and its subsidiaries provide for depreciation and amortization principally on the straight-line method over the estimated useful lives of the assets.

The composition of fixed assets is as follows:

	1972	1971	Estimated Useful Life
Machinery, furniture and equipment	$183,706	$ 70,822	3-10 years
Leasehold improvements	79,497	76,563	Life of lease
	$263,203	$147,385	
Less accumulated depreciation and amortization	103,144	61,436	
	$160,059	$ 85,949	

5. Data Bank Licenses:

The policy of the Company is to amortize the acquisition cost of data bank licenses generally over the life of the agreement commencing in the year that the related service becomes fully operational. Annual fees incurred under these agreements are charged to operations. If, however, the acquisition costs of data bank licenses are deemed not to be recoverable through future operations, these costs are written off in the current period.

exclusive right within the United States to market information services from Excerpta's data bank of biomedical information. The Company at its option may extend this agreement to 1984, commencing with the year which begins July 1, 1972, by the payment of an annual fee (initially $100,000 increasing $50,000 annually thereafter to a maximum of $300,000) and the issuance, annually, of additional shares of Class A common stock whose market value, as defined in the agreement, equals 2 percent of the Company's consolidated gross revenues for such fiscal year. The Company has not yet remitted the quarterly installment of $25,000 due by September 30, 1972. The Company may terminate the agreement on June 30 of any year by advance notice to Excerpta.

The $1,020,000 cost (76,666 shares of Class A common stock issued in 1969 and 1970) of obtaining this data bank license has been charged to current operations as an extraordinary item. This amount was deemed not to be recoverable through future operations because of the losses sustained and the annual fee obligations under the present agreement. Management is currently negotiating with Excerpta to reduce the Company's operating responsibilities as well as the aforementioned financial obligations under this agreement. The future operational status of these services is dependent upon the outcome of these negotiations.

6. Long-Term Debt:

A summary of long-term debt at June 30, 1972 is as follows:

Note payable to bank due July 31, 1973 with interest at 2% above the prime rate (see note 10 to consolidated financial statements)	$175,000
9.5% deferred payment agreement due in equal monthly installments through September 1, 1973	69,372
8.6% convertible subordinated debentures due October 31, 1981	150,600
6% convertible subordinated debentures due July 31, 1986 including accrued interest at June 30, 1972 of $5,902	113,202
	$508,174
Less current installments	55,000
	$453,174

The deferred payment agreement is collateralized by the assets of the Company.

The 8.6% and 6% debentures may be converted, at the option of the holders, into 30,798 shares ($4.89 per share) and 6,131 shares ($17.50 per share), respectively, of the Class A common stock of the Company. The Company has the right to defer repayment of one-third of the principal amount of each issue for one year and an additional one-third for two years beyond the indicated maturity date. Interest will be payable at 9% per annum during any extension period.

Under terms of the agreements, the Company may redeem the debentures, in whole or in part, at any time at 100% of the principal amount plus accrued interest to the redemption date. The debentures are subordinated to indebtedness for borrowed funds and accounts due for equipment, supplies or data or rights thereto, currently existing or hereafter incurred.

Interest shall not be paid on the 8.6% debentures prior to October 31, 1974. The Company did not accrue interest on these debentures (see note 8 for conversion of certain debentures subsequent to June 30, 1972). The Company has elected, under the terms of the 6% debentures, to postpone all payments of interest until July 31, 1974 and, accordingly, long-term debt includes interest accrued thereon.

7. Contingencies and Commitments:

The leases on electronic data processing equipment require annual payments of $124,000. These leases expire in May 1974 except that the Company has cancellation rights, with certain penalties, in April 1973.

Commitments for the rental of office space in the next fiscal year are approximately $50,000.

The Company is negotiating the termination of existing employment agreements with three of its officers, although it is presently planning to continue the employment of these individuals. These agreements are for periods of up to two years and require, among other things, payment of annual compensation aggregating $80,000. In addition, the employment contracts for two other officers were terminated subsequent to June 30, 1972. The Company is also negotiating an employment agreement with its Chief Executive Officer. It is expected that this contract will be for a period of two years and will require, among other things, an annual salary of $45,000, and will provide for the issuance of 100,000 shares of Class A common stock at $.50 per share under a nonqualified stock option.

Certain stockholders have the right to request registration of Class A common stock under the Securities Act of 1933. The Company agreed to absorb registration costs, when requested.

The Company has entered into an agreement with a stockholder to issue 7,500 shares of its Class A common stock in exchange for cancellation of that stockholder's rights to require the Company to repurchase or register 30,000 shares. The rights, previously granted to certain stockholders, to require the Company to repurchase 46,666 shares of its Class A common stock have terminated during the year ended June 30, 1972.

The Company has incurred costs for professional services of approximately $40,000 in connection with the acquisition of Mauchly Wood Systems Corporation and the proposed acquisition of Digital Resources Corporation. These costs, most of which were incurred subsequent to June 30, 1972 are not recorded in the accompanying financial statements.

Under financing arrangements subsequent to June 30, 1972 the Company has assigned its ownership interest in Datapro Research Corporation as collateral and has issued [illegible] warrants (see note 10 to consolidated financial statements).

8. Capital Stock, Options and Warrants:

In accordance with the Company's qualified stock option plan, options may be granted to key employees prior to September 30, 1977 to purchase a maximum of 600,000 shares of Class A common stock at not less than fair market value at the date of grant. At June 30, 1972 there were 527,525 shares which may be granted prior to the expiration of the plan, providing an equivalent number of authorized and unissued shares are available. The options expire five years after date granted and are exercisable as determined by the Board of Directors which as to shares currently under option is principally on a cumulative basis as follows: One-third of the shares can be exercised after eight months from the date granted and one-third after each eighth month period thereafter.

At June 30, 1972, options were outstanding to purchase 27,150 shares (of which option for 475 shares were exercisable at that date) at option prices from $3.75 to $22.75 per share. During the year options for 30,000 shares were issued, options covering 18,000 shares were exercised and options covering 9,600 shares were cancelled. No charges were made to income in connection with the plan.

Warrants to purchase 103,000 shares of the Company's Class A common stock at prices from $2.00 to $5.00 per share were outstanding at June 30, 1972. During the year warrants to purchase 35,000 shares were issued, principally to guarantors of the bank note payable at $2.00 per share and warrants to purchase 7,500 shares at $3.50 per share were exercised. The outstanding warrants expire as follows: 30,000 in March 1973, 35,000 in January 1974 and 35,000 in February 1975 (see note 2 to the consolidated financial statements for warrants to be issued subsequent to June 30, 1972 in connection with financing arrangements).

The Company has reserved an aggregate of 167,079 shares of Class A common stock for conversion privileges of convertible subordinated debentures and the exercise of outstanding stock options and warrants. Subsequent to June 30, 1972, 10,065 shares were issued upon conversion of $52,250 of 8.6% debentures. Also, it is expected that a nonqualified stock option for 100,000 shares will be granted to an officer of the Company (see note 7 to consolidated financial statements).

During the year, a former officer contributed 25,000 shares of Class A common stock to the Company and 103,475 shares of Class B common stock held by the officer were converted into Class A, all in accordance with an agreement dated February 9, 1972 wherein the employment of the officer was terminated and outstanding matters between the officer and Company were settled. For other changes in outstanding shares, see Consolidated Statement of Capital in Excess of Par Value.

Stock options and warrants were not included in the computation of loss per share since the market price of the Class A common stock is currently less than the related exercise prices.

Federal Income Taxes:

At June 30, 1972 tax loss carryforwards of approximately $2,655,000 were available to reduce future federal taxable income within the limitations of applicable regulations in the event that income prior to their expiration is sufficient to permit their utilization. The carryforwards will expire as follows:

1973	$ 234,000
1974	272,000
1975	641,000
1976	590,000
1977	818,000
	$2,655,000

10. **Subsequent Acquisition and Financial Arrangements:**

Acquisition:

On August 16, 1972, the Company acquired all of the outstanding stock of Mauchly Wood Systems Corporation, a wholly-owned subsidiary of Digital Resources Corporation for the consideration of $190,000 in cash and the issuance of 35,000 shares of Class A common stock. This acquisition will be accounted for by the purchase method whereby the value of the consideration given will be allocated to the net assets acquired. A portion of the aggregate acquisition cost will be assigned to intangible assets, which amount will be ratably charged to operations in the succeeding years.

The unaudited financial statements of Mauchly Wood at July 31, 1972, reflected net assets of approximately $132,000 including working capital of $97,000. For the year ended October 31, 1971 and the nine months ended July 31, 1972, revenues were $922,000 and $587,000 and losses from operations were $208,000 and $66,000, respectively (all amounts are unaudited).

The Company is in the process of negotiating for the acquisition of the business and assets of Digital Resources Corporation which is engaged in computer related services.

Financing arrangements:

During September and October, 1972 the Company borrowed an aggregate of $200,000 from a stockholder in exchange for (1) a note payable on March 31, 1974 with interest at 7½% per annum, (2) the assignment of 127,104 shares of Datapro Research Corporation (the company's interest of 27% consists of 258,881 shares) and 80% of the capital stock of Mauchly Wood Systems Corporation, a wholly-owned subsidiary, as collateral and (3) the issuance of warrants to purchase 50,000 shares of Class A common stock at $1 per share for a period of three years. This note payable would become due and payable thirty days after the sale of Datapro stock, if such sale is consummated. At present the details of this transaction are contained in letters of understanding.

In addition, on October 13, 1972 a stockholder issued a letter of commitment to purchase 125,000 shares of Class A common stock for $50,000 ($.40 per share) within ninety days.

On October 20, 1972 an agreement was reached with the bank to extend the loan due August 31, 1972 to July 31, 1973. In consideration thereof the company will assign 100,000 shares of Datapro stock as collateral. Stockholders continue to guarantee the payment of this loan.

REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

The Board of Directors
3i Company/Information Interscience Incorporated

We have examined the consolidated balance sheet of 3i Company/Information Interscience Incorporated and subsidiaries as of June 30, 1972 and the related consolidated statements of loss and deficit, capital in excess of par value and changes in financial position for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances, except we were not able to examine independent valuations of the Class A common stock issued in business acquisitions during the year since the Company did not obtain such valuations. We previously examined and reported upon the consolidated financial statements of the Company for the year ended June 30, 1971 which financial statements, in our opinion, fairly presented financial position, results of operations and changes in financial position, all subject to (1) the recovery of the cost of the investment in affiliated company and data bank license, (2) the completion of the additional financing required to continue the operations of the Company and (3) the completion of arrangements to meet a stock purchase commitment, if required, related to the acquisition of the data bank license.

The aforementioned financial statements have been prepared on a going-concern basis which contemplates the realization of assets and liquidation of liabilities in the ordinary course of business. Continuation of the business is dependent upon obtaining adequate financing and ultimately achieving profitable operations. Should adverse circumstances interrupt the continuity of the business, the realization of assets and order of maturity of liabilities may be affected. During the current and prior years, the Company experienced substantial losses and at June 30, 1972 had a substantial deficit. The financing arrangements completed subsequent to June 30, 1972, as described in Note 10 to the consolidated financial statements, were required in order to continue operations. The adequacy of these financing arrangements is dependent upon the Company and its subsidiaries performing in accordance with management's operating plan for the year ending June 30, 1973, which plan includes Mauchly Wood Systems Corporation acquired subsequent to June 30, 1972. Based on this plan, the Company and its subsidiaries, as consolidated, anticipate profitable operations for the year ending June 30, 1973. In addition, the Company may require additional financing for the payment under the data banks license agreement as explained in Note 5 to the consolidated financial statements.

In our opinion, subject to the contingencies in the preceding paragraph relating to the realization of the investment in affiliated company referred to in Note 5, the balance sheets at June 30, 1972 and the related statements of loss and deficit, capital in excess of par value and changes in financial position for the year then ended present fairly the financial position of 3i Company/Information Interscience Incorporated and subsidiaries at June 30, 1972 and the results of their operations and the changes in their financial position for the year ended June 30, 1972, all on a consistent basis. Because of the matters discussed in the preceding paragraph relating to the realization of the investment in affiliated company, we do not express an opinion on the financial statements for the year ended June 30, 1971, all on a consistent basis. Because of the matters discussed in the preceding paragraph relating to the realization of the investment in affiliated company, we do not express an opinion on the results of operations and changes in financial position for the year ended June 30, 1972.

LYBRAND, ROSS BROS. & MONTGOMERY

NOTICE OF MOTION IN BEHALF OF MAIN LAFRENTZ AND CO. FOR A PROTECTIVE ORDER (Filed November 9, 1973) 277a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

No. 73 Civ. 2200 DNE

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Milton Kunen, and the exhibits attached thereto, sworn to the 8th day of November, 1973, and upon all the prior proceedings heretofore had herein, the undersigned will move this Court at Room 1506, United States Courthouse, Foley Square, New York, New York, on the 19th day of November, 1973 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, granting to defendant Main Lafrentz a protective order staying all discovery in this action against it pending determination of its motion for summary judgment, on the ground that said protective order is necessary to prevent undue harassment, burden and expense to defendant Main Lafrentz, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
November 8, 1973

Yours, etc.,

KAYE,SCHOLER,FIERMAN,HAYS & HANDLER

By _____
A Member of the Firm
Attorneys for Defendant
Main Lafrentz & Co.
425 Park Avenue
New York, New York 10022
(212) PL 9-8400

TO: Counsel on Attached List

TO: ROBERT R. FELTON, ESQ.
Attorney for Plaintiff
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Mineola, New York 11501

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Attorneys for Defendants
Walston & Co., Inc. and James Nissan
One Chase Manhattan Plaza
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3I Co./Information Interscience, Inc.
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Attorneys for Defendants
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Infonet (Excerpta Medica - Rescona)
N.V. and Eltrac (Infonet) N.V.
330 Madison Avenue
New York, New York 10017

ANDERSON RUSSELL & KILL, ESQS.
Attorneys for Defendants
Reisenbach and Elias
600 Fifth Avenue
New York, New York 10020

A 201 Affidavit of Service by Mail — LUTZ APPELLATE PRINTERS, INC.

U.S. COURT OF APPEALS:SECOND CIRCUIT

FELTON, Appellant,

against

WALSTON Co., et al, Defs.-Appellees.

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, Laurel N. Huggins, being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1050 Carroll Place, Bronx, New York

That upon the 29th day of July 1974, deponent served the annexed Appellants' Appendix upon * attorney(s) for * in this action, at * the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 29th day of July 1974

Laurel N. Huggins

Print name beneath signature

LAUREL N. HUGGINS

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975

* Breed, Abbott & Morgan-Attorneys for Defs.-Appellees Walston & Co. and Nissan-1 Chase Manhattan Plaza, New York 10005.

Sullivan & Cromwell-Attorneys for Defs.-Appellees Marine Midland and Brownstein-~~48 Wall~~ 48 Wall Street, New York 10005.

Leon, Weill & Mahoney-Attorneys for Def.-Appellee 31 Co./Information Interscience-261 Madison Avenue, New York 10016.

Anderson, Russell & Kill-Attorneys for Defs.-Appellees Elias, Riesenbach & Sher-600 5th Avenue, New York 10020.

Shea Gould Climenko & Kramer-Attorneys for Defs.-Appellees Stichting, Medica, Infonet and Eltrac-330 Madison Avenue, New York 10017.

Kaye, Scholar, Fierman, Hays & Handler-Attorneys for Def-Appellee Main Lafrentz & Co.-425 Park Avenue, New York 10022.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

No. 73 Civ. 2200 DNE

AFFIDAVIT IN SUPPORT OF A MOTION FOR A PROTECTIVE ORDER

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MILTON KUNEN, being duly sworn, deposes and says:

1. I am a member of the firm of Kaye, Scholer, Fierman, Hays & Handler, attorneys for the defendant Main Lafrentz & Co. ("Main Lafrentz"). I make this affidavit in supprt of the motion of Main Lafrentz for a protective order to stay all discovery proceedings against Main Lafrentz pending determination of its motion for summary judgment, and in compliance with Rule 9(f) of the General Rules of this Court.

2. This motion is made to put an end to plaintiff's continued harassment of Main Lafrentz as hereafter stated. Main Lafrentz' summary judgment motion, to be argued on November 12, demonstrates beyond peradventure that plaintiff's complaint against Main Lafrentz is totally without merit and that there are no triable issues of fact with respect to the plaintiff's specious contentions made in his amended complaint. Plaintiff's actions have taken the form of not only hurling baseless charges against Main Lafrentz in the amended complaint, but also in plaintiff's

application to file a second amended complaint which is replete with further frivolous allegations against Main Lafrentz. By these tactics plaintiff has made it obvious that he intends to use his proposed discovery solely as a fishing expedition, to aid him in presenting additional, equally meritless charges so that he can further malign Main Lafrentz and confuse this litigation. It is respectfully submitted that such harassment should be put to an immediate end and a protective order issued.

3. Main Lafrentz was not a party to plaintiff's original action filed on May 17, 1973, but was added as a party defendant in plaintiff's first amended complaint filed on August 14, 1973. Pursuant to this Court's Order, plaintiff then commenced his discovery of defendants Marine Midland Bank, Joel Brownstein, Walston & Co. and James Nissan.

4. On the basis of the meritless contentions against Main Lafrentz in plaintiff's amended complaint, Main Lafrentz moved for summary judgment on November 2, 1973. On November 5, 1973, counsel for Main Lafrentz received plaintiff's motion for leave to file a second amended complaint by which plaintiff intends to hurl additional frivolous and unsubstantiated allegations against Main Lafrentz.

5. On October 24, 1973, plaintiff served by mail four notices of deposition upon counsel for Main Lafrentz, together with four document requests. By these notices of deposition plaintiff seeks to examine at least four witnesses on behalf of Main Lafrentz: the "senior auditor" in charge of the audit of 3I Company/Information Interscience, Inc. ("3I") for the fiscal years ended June 30, 1969 and June 30,

1970, the manager in charge of said audits, the "supervising senior auditor" in charge of said audits, and the partner in charge of those two audits. In addition, the document request asks Main Lafrentz to produce its entire workpaper file in connection with both the 1969 and 1970 3I audits, and all documents regarding 3I's acquisition of a certain data bank license from Excerpta Medica Foundation.

6. The notices of deposition were made returnable at the Clerk's Office of the United States Courthouse on November 6, 1973, which is Election Day, a day on which the Courthouse is closed. In addition, plaintiff's document requests asked that these voluminous documents be produced on November 6, 1973, even though, pursuant to Rule 34 of the Federal Rules of Civil Procedure, Main Lafrentz is not obligated to respond to the document request until November 26, 1973.

7. In view of these obvious failures of plaintiff to follow proper procedure, and also in light of Main Lafrentz' motion for summary judgment, I called plaintiff on October 31, 1973 and suggested that the depositions and response to the notice to produce documents be adjourned until after this Court's determination of Main Lafrentz' motion for summary judgment. At first, Mr. Felton agreed to an adjournment into December, but he later called me back to state that he would not so agree. On that day he wrote me a letter, a copy of which is attached hereto as Exhibit A, which recognized that he had made the deposition notice returnable on Election Day and that he had failed to give the required 30-day notice for the production of documents. Mr. Felton asked that Main Lafrentz waive the 30-day period and produce its witnesses with the documents on November 7, 1973.

8. Upon receipt of that letter on November 2, 1973, I wrote to Mr. Felton, a copy of which letter is attached hereto as Exhibit B. I pointed out that his letter had recognized the invalidity of his notices of deposition and his request to produce documents, and I stated that Main Lafrentz would not consent to waiving the 30-day period provided under the Rules. I reminded him that I had asked that the discovery be adjourned until the determination of the summary judgment motion, and I specifically pointed out that the first date upon which Main Lafrentz was required to respond to the requests for the production of documents was November 26, 1973. Because I have not heard from Mr. Felton since that date, it is evident that he will not consent to an adjournment so that the Court may decide Main Lafrentz' motion for summary judgment. Therefore, this motion became necessary.

9. Insofar as Main Lafrentz is concerned, the amended complaint deals with alleged omissions and misstatements in the financial statement of 3I for the fiscal year ended June 30, 1970, upon which Main Lafrentz issued a qualified opinion. It is significant that plaintiff seeks to depose at least four witnesses from Main Lafrentz and to examine all workpapers with regard to both the 1969 and 1970 audits, although the 1969 audit is not even the subject of any of plaintiff's contentions in either his 180-paragraph amended complaint or his 196-paragraph proposed second amended complaint. In addition, the Court should be aware that within three months of filing his first amended complaint, plaintiff applied to this Court for leave to file a second amended complaint with new, and frivolous charges

against Main Lafrentz. This is demonstrated in my affidavit submitted in opposition to that motion which is returnable on November 12, 1973.

10. The claims made by plaintiff against Main Lafrentz, both in the first amended complaint and in the proposed second amended complaint, require no discovery -- they may be decided promptly on Main Lafrentz' motion for summary judgment. Requiring Main Lafrentz to produce these voluminous documents and requiring it to submit to four depositions prior to the decision on Main Lafrentz' motion for summary judgment would be highly unfair and improper under the facts and circumstances of this case. Main Lafrentz has already been subjected to undue burden and expense by plaintiff's baseless charges against it. The expense would be increased geometrically if Main Lafrentz were required to produce all these documents and subject itself to these requested extensive, unnecessary depositions.

11. It is respectfully submitted that this burden and expense to Main Lafrentz and harassment on the part of plaintiff must be put to an immediate end, that the motion for summary judgment should be granted and that plaintiff's motion to amend the complaint to add new frivolous allegations against Main Lafrentz should be denied. While the Court is focusing on the aforesaid motions, the instant motion by Main Lafrentz for a protective order should be granted in all respects.

Milton Kunen

Sworn to before me, this 8th
day of November, 1973.

Notary Public

ALLAN H. PEPPER
Notary Public, State of New York
Qualified in Kings County
Commission Expires March 30, 1974

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT OF MILTON KUNEN

EXHIBIT A - LETTER BY ROBERT R. FELTON TO KAYE SCHOLER FIERMAN HAYS AND HANDLER DATED OCTOBER 31., 1973

Robert R. Felton

Attorney at Law

112 Third Avenue
Mineola, N.Y. 11501

PIONEER 6-5711

October 31, 1973

Kaye Scholer Fierman Hays & Handler
425 Park Avenue
New York, NY 10022

RE: Notices (4) of Deposition
Upon Oral Examination
Dated October 17, 1973

ATT: Mr. Milton Kunin

Dear Sir:

I acknowledge today's telephone call wherein you informed me that plaintiff's Notices inadvertently were made returnable on Election Day. Unfortunately, Election Day on my office calendar is not noted in "Red" as a holiday.

You also informed me that you would not produce the items in the annexed Schedules since you insisted on a full 30 day period.

I would have no objection to adjourning these depositions to another date, e.g. November 16, 1973. However, you further informed me that you planned a Summary Judgment motion returnable before November 16, 1973.

I thereupon advised you that my motion to amend the Complaint herein was already in the mail.

In view of my aforesaid motion as well as my anticipated depositions of your witnesses, I hereby request that you waive the 30 day period and produce your witnesses with documents requested for deposition on November 7, 1973, i.e. the day following Election Day and that you make your contemplated Summary Judgment motion returnable for two (2) weeks after the completion of these aforesaid depositions.

Respectfully submitted,

Robert R. Felton

Robert R. Felton

kv

EX. A

EXHIBIT B - LETTER FROM MILTON KUNEN TO ROBERT R. FELTON DATED NOVEMBER 2, 1973

November 2, 1973

BY HAND

Robert R. Felton, Esq.
42 Third Avenue
Mineola, New York 11501

RE: Felton v. Walston, et al.

Dear Mr. Felton:

I have your letter of October 31, 1973, I gather from your letter that you understand that your notice of deposition is void in light of the fact that you made it returnable for Election Day at the court-house which is closed on that date and that the notice to produce documents is also void in that it was not in accord with the Federal Rules of Civil Procedure, which require a 30 day notice.

Your letter is written to me as a result of my initiating discussions with you by informing you (1) that I was moving for summary judgment, (2) that your notice is void, (3) that you have not given proper notice with regard to the documents, and (4) attempting to have you consent to withhold any request for the deposition of our client until after the court considers our contemplated summary judgment motion. Your first reaction to my call was that you would adjourn your notices to December 16. About an hour later you phoned back and talked about November 16, and on each occasion I told you that we were going ahead with our motion for summary judgment and intended to notice it for November 14 and would oppose a deposition prior to that date.

Robert K. Felton, Esq. November 2, 1973

I can not accept the proposal that you are making. The Federal Rules of Civil Procedure are clear and should be complied with and, as you will see from our motion papers, we feel strongly that your case is without merit and that summary judgment should be granted.

I also would like you to know that the reference in your letter to November 16, 1973 is puzzling in that your notice to take depositions was post-marked October 24, 1973 and, consequently, no response to your request for production of documents need be made until November 26, 1973.

This morning I received your motion seeking to further amend the amended complaint, which is returnable on November 12, so that our motion for summary judgment will be heard on the same date.

Sincerely,

Milton Kunen

MK:amc

AFFIDAVIT OF ROBERT R. FELTON IN OPPOSITION TO MOTION BY MAIN LAFRENTZ FOR SUMMARY JUDGMENT
(Filed November 9, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

STATE OF NEW YORK)
ss.:
COUNTY OF NASSAU)

ROBERT R. FELTON, being duly sworn, upon information and belief, deposes and says:

I submit this affidavit in opposition to defendant Main Lafrentz' spurious motion for summary judgement herein.

I respectfully state that I find it inconceivable that my opponent Mr. Kunen would attempt this motion considering the misrepresentations, omissions and non-disclosures by Main Lafrentz in its Certificate (Report) and its accompanying Notes to the Consolidated Financial Statements of 3 I Co. for fiscal year ended June 30, 1970.

Mr. Kunen is incorrect in his statement pursuant to Rule 9(g) both in his distillation of the facts alleged in the Complaint and in his bald assertion that there are no genuine issues to be tried.

I herewith annex a copy of my reply affidavit submitted for my motion to amend the Complaint herein, wherein, in response

to the frantic opposition affidavit of Mr. Kunen, I showed the following:

(a) Main Lafrentz for its own purposes obscured the identity of defendant Fred Von Eugen as well as the existence of certain letter agreements between Von Eugen and 3 I Co. Main Lafrentz Note 1 misstated the "subsequently amended in June, 1970" agreement between Von Eugen and 3 I Co. to make same appear to be between 3 I Co. and Excerpta Medica Foundation.

(b) Main Lafrentz Note 6 overstated "the stock issued in connection with agreement with Excerpta Medica Foundation" by the material amount of $150,000 as of June 30, 1970.

(c) There was presumptive evidence to Main Lafrentz that the letter agreement "dated June 15, 1970" between 3 I Co. and Von Eugen was back-dated and that the agreement was executed some months after the close of the 1970 fiscal year.

(d) The balance sheet of 3 I Co. as of June 30, 1970 understated current liabilities (due to Von Eugen either in cash or in stock) by the material amount of $150,000. Main Lafrentz did not disclose this material fact either in its Certificate (Report) or in its accompanying Notes.

In addition to the above misrepresentations, omissions and non-disclosures, 3 I Co. and the acquiescing Main Lafrentz stated the data bank transactions on the 3 I Co. balance sheet for fiscal year ended June 30, 1970, as "Data bank license, <u>at cost</u>," $1,000,000. Mr. Kunen admits in his moving affidavit that the major portion of this "cost" was effected by the use of restricted stock. Main Lafrentz Note 1 omitted the entire facts surrounding

the transactions in its cleverly worded statement:

> "The consideration for this right is $1,000,000, including 46,666 shares of Class A common stock issued in October, 1969, which the Company can be required to purchase at $15.00 per share in October, 1971 and 30,000 shares of Class A common stock to be issued in December, 1970 which the Company can be required to purchase at $5.00 per share in July, 1971."

Aside from the fact that arithmetic multiplication of 46,666 x $15 and 30,000 x $5 does not add up to $1,000,000, there was no notice in this statement that these 76,666 shares were restricted, legended stock. Thus Main Lafrentz permitted 3 I Co. to materially enhance its balance sheet assets using restricted, legended stock.

There was a qualification contained in the Main Lafrentz Certificate (Report) and Mr. Kunen believes that this qualification cures all the aforesaid misrepresentations, omissions and non-disclosures.

This qualification was contained in the Main Lafrentz Opinion:

> "In our opinion, subject to the realization of carrying value of data bank licenses and investments in affiliated companies as discussed in notes 1 and 2 of Notes to Consolidated Financial Statements, such financial statements present fairly the financial position of 3i Company/Information Interscience Incorporated and subsidiaries at June 30, 1970, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year."

I suggest that Mr. Kunen read another paragraph of the Main Lafrentz Note 1 which also referred to the data bank licenses:

> During the second half of the fiscal year ended June 30, 1970, the Company commenced marketing its services in connection with the data bank licenses acquired during the year, and had not realized any significant amount of revenues from these services. Accordingly, the Company has not begun to amortize the acquisition costs of these rights and has deferred the determination of its policy in regard to the amortization."

It is quite obvious that the aforesaid qualification applied specifically to the aforesaid paragraph of Note 1. Thus it is inconceivable that this qualification could in any way warn, inform and disclose all the aforesaid misrepresentations, omissions and non-disclosures of the obscuring of the Von Eugen agreements, the overstated stock issued, the understated current liabilities and the use of restricted, legended stock to enhance the 3 I Co. balance sheet.

There is no refuge for Mr. Kunen and Main Lafrentz in reaching out for succor to the Certificate (Report) of Lybrand Ross Bros and Montgomery, who succeeded Main Lafrentz as the auditor for 3 I Co. for the following year. Lybrand Ross Bros. are quite explicit in their Certificate (Report):

> "We did not examine the financial statements of 3i Company/Information interscience incorporated and subsidiaries for the year ended June 30, 1970, which statements were examined by other accountants, whose report is subject to the realization of the carrying value of data bank licenses and investments in affiliated companies.

Lybrand Ross Bros. merely quoted Main Lafrentz' opinion and in effect stated that Main Lafrentz was responsible for its Certificate (Report) up to June 30, 1970, which is in fact what the Complaint herein alleges and what plaintiff will prove on the trial of this action.

Main Lafrentz Note 1 related also to amendment of Scientific Literature Corporation purchase agreement:

> "On November 2, 1970, the Company amended the agreement whereby it acquired Scientific Literature Corporation (SLC), a wholly-owned subsidiary. The amended agreement released the Company from certain restrictions in regard to the operations of SLC and requires the Company to issue to the former shareholders 44,800 shares of Class A common stock which have been or could have been earned contingent upon earnings of SLC. These shares are reflected as outstanding in the accompanying financial statements. In the opinion of the Company, SLC will achieve the necessary earnings which would have entitled the sellers to receive these shares under the original agreement."

Main Lafrentz was required to read the aforesaid original agreement as well as the amending agreement as part of generally accepted auditing procedures. Mr. Kunen included the original agreement as to Scientific Literature Corporation and Scientific Literature Consultants, Inc. dated April 25, 1969, the amending agreements dated October 21, 1969, and the "Second Amendment" dated November 2, 1970.

Main Lafrentz knew that the Kesslers were the major stockholders of Scientific Literature Consultants, Inc. and after

its purchase by the 3 I Co. subsidiary, the Kesslers became managerial employees by 3 I Co. Thus Main Lafrentz was charged with extra care in its reading of the "Second Amendment." Furthermore this "Second Amendment" anticipatorily, prematurely and improperly released 12,800 3 I Co. shares held in escrow pursuant to the original agreement and also anticipatorily, prematurely and improperly issued an additional 44,800 3 I Co. shares to the shareholders of Scientific Literature Consultants, Inc. (in effect and in the main, to the Kesslers) in view of the specific requirements of the original agreement for $58,400 of pre-tax earnings, when in fact Scientific Literature Corporation sustained a loss of $1,055.

In paragraph (34) of his moving affidavit, Mr. Kunen understands and agrees that the only basis for the "Second Amendment" was paragraph 15b of the original agreement (Exhibit 9 of his moving papers.)

Paragraph 15b of the original agreement as applicable to pre-tax earnings of subsidiary states:

> (b) "Definition of "Pre-Tax Earnings of Subsidiary. As used in this paragraph, "Pre-Tax Earnings of Subsidiary" shall mean the earnings of Subsidiary for each of the fiscal years 1970 and 1971 in excess of $58,400, and shall be computed by such independent certified public accountants as are regularly employed by 3i at the time such determination is to be made, in accordance with generally accepted accounting principles consistently applied in a manner which will fully and accuratel present the results of the operations of Subsidiary for the fiscal years indicated. In determining such "Pre-Tax Earnings", said accountants' computations will adhere to the following:
>
> (i) "Subsidiary's operations shall

be deemed to be the business operations of the Corporation as the same existed the day before the Closing, and any extensions of such business operations which may subsequently be made by Subsidiary and 3i. If for any reason Subsidiary's operations should not be carried on in separate corporate form, 3i will nonetheless continue to account for Subsidiary's operations as a single, separate entity in such manner as to facilitate the computations required by this paragraph."

(ii) "No allocation of general administrative cost and expenses of 3i shall be made to Subsidiary, except such as shall be directly attributable to the operation of Subsidiary's business as a wholly-owned subsidiary of 3i;"

(iii) "All transactions and business dealings between Subsidiary and 3i and between Subsidiary and any other subsidiary or any division of 3i shall be accounted for at the rates normally charged to third parties for similar work or services;

Mr. Kunen included the Main Lafrentz work sheet as to Consolidated Profit and Loss Statement June 30, 1970, (Exhibit 10) which relating to Scientific Literature Corporation, although partially illegible, reads as follows:

Sales	$256,461
Cost of sales	175,154
Selling and Administrative	82,362
Net operating loss	1,055

Mr. Kunen imperviously misquotes the aforesaid Main Lafrentz worksheet in paragraph (35) of his moving affidavit.

Despite the fact that this aforesaid Main Lafrentz worksheet (Exhibit 10) clearly states "Selling and administrative expenses $82,362," Mr. Kunen miscategorizes these expenses as indirect general and administrative expenses. It is obvious that Mr. Kunen chose this incorrect categorization of expense to protect Main Lafrentz' omissions and non-disclosures in view of the aforesaid pre-tax earnings requirements, paragraph 15b of the original Scientific Literature Corporation agreement.

The fact is quite clear that Scientific Literature Corporation lost $1,055 for fiscal year ended June 30, 1970 and therefore since there was no pre-tax earnings of Scientific Literature Corporation for fiscal 1970, the "Second Agreement" releasing these 12,800 3 I Co. shares and issuing the additional 44,800 3 I Co. shares was anticipatory, premature and incorrect.

Mr. Kunen certainly must understand that there cannot be pursuant to aforesaid paragraph 15b of the original agreement, any comparison between the loss of $1,055 sustained by Scientific Literature Corporation and the loss sustained by its parent 3 I Co., since as aforesaid this original agreement required pre-tax earnings of Scientific Literature Corporation to at least amount to $58,400.

Certainly Mr. Kunen must agree that one of the most important duties of Main Lafrentz was to protect 3 I Co. from being raided by its officers and employees in premature, anticipatory and improper agreements disbursing huge blocks of 3 I Co. stock.

Mr. Kunen has also twisted and distorted the facts concerning my purchases and sales of 3 I Co. He was present and participated at my deposition and the transcript of my testimony was available to him. As he well knows, as I purchased 3 I Co. stock

and then having sold same at profit, I was always induced by and in reliance on the actions of the aforesaid defendants to repurchase the 3 I Co. stock at a price approximately what I previously sold the stock for. The "profits" made by me in these transactions were thus nullified by my purchases at the higher prices.

In its aforesaid material misrepresentations, its omissions and non-disclosures of material facts in its Certificate (Report) and accompanying Notes, Main Lafrentz caused the market price of 3 I Co. stock to rise, thus affecting the purchase and sale of this stock and thus causing me to purchase this stock without any knowledge of these aforesaid misrepresentations, omissions and non-disclosures.

I plan to move for summary judgment against Main Lafrentz but I decided to first conduct depositions of the Main Lafrentz employees and partner who conducted the 3 I Co. audit. Unfortunately I selected Election Day, a day not specially marked on my calendar, and upon attempting to orally stipulate for another date, I was rebuffed by Mr. Kunen.

WHEREFORE, I respectfully request that this Court deny this motion for summary judgment in all respects.

Robert R. Felton

ROBERT R. FELTON

Sworn to before me

this 8th day of November, 1973

Leona D. MacFarlane

LEONA D. MacFARLANE
Notary Public, State of New York
No. 30-[illegible]50
Qualified in Nassau County
Term Expires March 30, 1974

NOTICE OF MOTION BY PLAINTIFF FOR LEAVE TO SERVE AN AMENDED COMPLAINT ADDING EGAN AS CO-PLAINTIFF

(Filed November 9, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT R. FELTON

Plaintiff

- against -

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANKS, INC. MARINE MIDLAND BANK - WESTERN, MARINE MIDLAND BANK - NEW YORK, MARINE MIDLAND BANK - ROCHESTER, MARINE MIDLAND BANK - CENTRAL, MARINE MIDLAND BANK - SOUTHERN, MARINE MIDLAND BANK OF SOUTHEASTERN NEW YORK, N.A., MARINE MIDLAND BANK - NORTHERN, MARINE MIDLAND BANK - EASTERN NATIONAL ASSOCIATION, MARINE MIDLAND BANK - CHAUTAQUA, NATIONAL ASSOCIATION, MARINE MIDLAND TINKER NATIONAL BANK, DREYFUS - MARINE MIDLAND, INC., JOEL BROWNSTEIN, 3 I CO./INFORMATION INTERSCIENCE, INC., GERALD L. BRODSKY, MAURICE BRODSKY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), MEDISCHE REFERATAN (EXCERPTA MEDICA) N.V., INFONET (EXCERPTA MEDICA - RESCONA) N.V., ELTRAC (INFONET) N.V., PETER WARREN, MAIN LAFRENTZ AND CO., FRED VON EUGEN, S. KIM KESSLER and GERALDINE KESSLER

Index No. 73 Civ. 2200 (DBB)

Defendants

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S I R S:

PLEASE TAKE NOTICE, that upon annexed affidavit of Edward J. Egan, sworn to on the 7th day of November, 1973, and the affidavit of Robert R. Felton, sworn to November 8, 1973, the summons, amended complaint and proposed amended complaint, a copy of which is attached as Exhibit A, and all prior proceedings herein, the undersigned will move this Court before the Honorable Dudley B. Bonsal in Room 1506 of the United States Court House, Foley

Square, New York, New York on November 19th, 1973 at 9:30 A.M., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 15(a) of the Federal Rules of Civil Procedure amending the complaint herein, adding Edward J. Egan as a co-plaintiff and permitting the service of the proposed amended complaint on defendants herein, on the grounds that Edward J. Egan has sustained a loss in the purchase and sale of 3 I Co. stock and wishes to join this action as a co-plaintiff so as to avoid the necessity of initiating a separate law suit and that justice so requires in order that all issues between the parties be fully litigated in this action, and for such other and further relief as this Court may deem just and proper.

Dated: Mineola, New York
November 8, 1973

Yours, etc.,

Robert R. Felton

ROBERT R. FELTON
Attorney for Plaintiffs
42 Third Avenue
Mineola, New York 11501
516-746-5711

TO: SHEA GOULD CLIMENKO & KRAMER, ESQS.
Attorneys for Defendants
Excerpta Medica
330 Madison Avenue
New York, New York 10017

LEON WEILL & MAHONEY, ESQS.
Attorneys for Defendant
3 I Co./Information Interscience, Inc.
261 Madison Avenue
New York, New York 10016

SULLIVAN & CROMWELL, ESQS.
Attorneys for Defendants
Marine Midland and Joel
Brownstein
48 Wall Street
New York, New York 10005

BREED ABBOTT & MORGAN, ESQS.
Attorneys for Defendants
Walston and Co., Inc. and
James Nissan
One Chase Manhattan Plaza
New York, New York 10005

KAYE SCHOLER FIERMAN HAYS & HANDLER
Attorneys for Defendant
Main Lafrentz & Co.
425 Park Avenue
New York, New York 10022

ANDERSON RUSSELL & KILL, ESQS.
Attorneys for Defendants
Riesenbach and Elias
600 Fifth Avenue
New York, New York 10020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON :

Plaintiff :

- against - :

WALSTON AND CO., INC., et al. :

Defendants :

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

EDWARD J. EGAN, being duly sworn, deposes and says:

I submit this affidavit in support of this motion to amend the Complaint herein so as to join this action as a co-plaintiff herein.

I reside at 33 Byron Lane, Larchmont, New York and I am an attorney with law offices at 250 Park Avenue, New York, New York.

The facts and circumstances surrounding my claim are as follows:

> In the latter part of May, 1971, I visited Marine Midland Bank at their offices at 250 Park Avenue. At this time I spoke to Mr. Garret O. Penhale, an officer in the trust department, who was acting as the custodian for the securities of the Estate for which I was the attorney.
>
> In the course of our conversation, I mentioned to Mr. Penhale that some friends had discussed 3 I Co. with me and I asked

him if he knew anything about 3 I Co.

Mr. Penhale said that he knew about 3 I Co., that the bank thought highly of it, that as a matter of fact the bank had a Report on the company and that the bank was buying 3 I Co. stock for some of its accounts.

Subsequently Mr. Penhale delivered a copy of the Report to my office. After I read this Report I was very impressed with 3 I Co. and I immediately purchased 200 shares, at a cost of $18.25 per share on May 28, 1971.

On October 19, 1971, I sold my 200 shares at a substantial loss realizing only $7.25 per share.

On October 25, 1973, I called the office of Robert R. Felton and informed him of my losses in 3 I Co. I had learned the identity of Mr. Felton through the Prospectus of Insyte Corporation. 3 I Co. was attempting to be merged into Insyte Corporation and this Prospectus described the aforesaid Litigation.

Upon calling Mr. Felton I informed him that I wished to engage him as my attorney and join action as a co-plaintiff for my aforesaid loss.

WHEREFORE, I respectfully request that the Complaint be amended so that I may join this action as Co-Plaintiff.

Edward J. Egan

EDWARD J. EGAN

Sworn to before me
this 14 day of November, 1975

Margaret M. Klapper

MARGARET M. KLAPPER
Notary Public, State of New York
No. 41-5720910
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON

Plaintiff

- against -

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANKS, INC., MARINE MIDLAND BANK - WESTERN, MARINE MIDLAND BANK - NEW YORK, MARINE MIDLAND BANK - ROCHESTER, MARINE MIDLAND BANK - CENTRAL, MARINE MDILAND BANK - SOUTHERN, MARINE MIDLAND BANK OF SOUTHEASTERN NEW YORK, N.A., MARINE MIDLAND BANK - NORTHERN, MARINE MIDLAND BANK - EASTERN NATIONAL ASSOCIATION, MARINE MIDLAND BANK - CHAUTAQUA, NATIONAL ASSOCIATION, MARINE MIDLAND TINKER NATIONAL BANK, DREYFUS - MARINE MIDLAND, INC., JOEL BROWNSTEIN, 3 I CO./INFORMATION INTERSCEINCE, INC., GERALD L. BRODSKY, MAURICE BRODSKY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), MEDISCHE REFERATAN (EXCERPTA MEDICA) N.V., INFONET (EXCERPTA MEDICA - RESCONA) N.V., ELTRAC (INFONET) N.V., PETER WARREN, MAIN LAFRENTZ AND CO., FRED VON EUGEN, S. KIM KESSLER and GERALDINE KESSLER

Index No. 73 Civ. 2200 (DBB)

Defendants

STATE OF NEW YORK)
ss.:
COUNTY OF NASSAU)

ROBERT R. FELTON, being duly sworn, upon information and belief, deposes and says:

I submit this affidavit in support of this motion to amend the complaint herein and so as to add Edward J. Egan as co-plaintiff and for permission to serve copies of the proposed amended complaint, attached hereto as Exhibit A.

A motion amending this complaint and returnable November 12th, 1973 is presently before this Court.

This instant motion to amend the complaint is based on the facts contained in the affidavit of Edward J. Egan, sworn to November 7, 1973. To summarize:

> Mr. Egan purchased 200 shares of 3 I Co. common stock on May 17, 1971 at a price of $18.25 per share. Mr. Egan purchased these shares in reliance on the Report of defendant Joel Brownstein, which Report was delivered to Mr. Egan by an officer of defendant Marine Midland Bank - New York.
>
> Mr. Egan sold his 200 shares at a substantial loss on October 19, 1971 realizing only $7.25 per share.
>
> Mr. Egan called my office on October 25, 1973, and informed me of his loss in 3 I Co. and furthermore stated that he wished to engage me as his attorney and wished to join me as a co-plaintiff.

WHEREFORE, it is respectfully requested that this motion for an order amending the complaint herein and adding Edward J. Egan as a co-plaintiff and permitting the service of the proposed amended complaint be granted on the grounds that Edward J. Egan has sustained a loss in the purchase and sale of 3 I Co. stock and wishes to join this action as a co-plaintiff so as to avoid the necessity of initiating a separate law suit and that justice so requires in order that all issues between the parties be fully litigated in this action, and for such other and further relief as this Court may deem just and proper.

Robert R. Felton

ROBERT R. FELTON

Sworn to before me
this 8th day of November, 1973

Leona D. MacFarlane

LEONA D. MacFARLANE
Notary Public, State of New York
No. [illegible]
Qualified in Nassau County
Term Expires March 30, 1975

PROPOSED AMENDED COMPLAINT ANNEXED TO MOTION (Filed November 29, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN ~~DISTRICT~~ OF NEW YORK

----------x

ROBERT R. FELTON and
EDWARD J. EGAN

Plaintiffs

- against -

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANKS, INC., MARINE MIDLAND BANK - WESTERN, MARINE MIDLAND BANK - NEW YORK, MARINE MIDLAND BANK-ROCHESTER, MARINE MIDLAND BANK - CENTRAL, MARINE MIDLAND BANK - SOUTHERN, MARINE MIDLAND BANK OF SOUTHEASTERN NEW YORK, N.A., MARINE MIDLAND BANK - NORTHERN, MARINE MIDLAND BANK - EASTERN NATIONAL ASSOCIATION, MARINE MIDLAND BANK - CHAUTAQUA, NATIONAL ASSOCIATION, MARINE MIDLAND TINKER NATIONAL BANK, DREYFUS - MARINE MIDLAND, INC., JOEL BROWNSTEIN, 3 I CO./INFORMATION INTERSCIENCE, INC., GERALD L. BRODSKY, MAURICE BRODSKY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), MEDISCHE REFERATAN (EXCERPTA MEDICA) N.V., INFONET (EXCERPTA MEDICA - RESCONA) N.V., ELTRAC (INFONET) N.V., PETER WARREN, MAIN LAFRENTZ AND CO., FRED VON EUGEN, S. KIM KESSLER and GERALDINE KESSLER

Defendants

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PROPOSED
CLASS ACTION
AMENDED COMPLAINT

Plaintiffs Demand
Trial By Jury

73 Civ. 2200
(DBB)

Plaintiffs, on behalf of themselves and all other purchasers of the securities of defendant 3 I Co./Information Interscience, Inc., from December 10, 1970 to October 24, 1972 for their Amended Complaint, upon information and belief, complaining of the defendants herein, alleges:

JURISDICTION AND VENUE

1. The action is commenced under and jurisdiction is based on the Securities Act of 1933, 15 U.S.C.A. sections 77a-z.

The Securities Exchange Act of 1934, 15 U.S.C.A Sections 78a-hh, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles.

2. The acts and transactions complained of herein occurred in substantial part within the Southern District of New York and offerings of securities involved herein have been made to plaintiff and the class in the said Southern District. Defendant 3 I Co./Information Interscience, Inc. was and still is a publicly held business corporation with securities purchased and/or sold "over the counter" by brokerage concerns mainly within the Southern District of New York. Defendant Walston and Co., Inc. maintains brokerage offices within the Southern District and was a dealer and also acted as a broker in the securities of the said defendant 3 I Co./Information Interscience, Inc. Defendant James Nissan is employed as a registered representative by defendant Walston and Co., Inc. at its office at 77 Water Street, New York, New York. Defendants Marine Midland Banks, Inc. and Marine Midland Bank - New York maintains bank branches and/or offices throughout the City of New York.

3. The matter in controversy exceeds the sum of $10,000.00, exclusive of interests and costs. This action is not instituted to confer jurisdiction on this Court which it would not otherwise have.

4. Defendants carried out the acts and practices hereinafter set forth by the use, means and instrumentalities of interstate commerce and the mails.

5. Plaintiffs bring this action individually and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a Class, consisting of those persons and business organizations who purchased securities of defendant 3 I Co./Information Interscience, Inc. (hereinafter referred to as defendant "3 I Co.") from December 10, 1970 to October 24, 1972 and were damaged by the acts hereinafter alleged:

6. Plaintiffs estimate that the Class is in excess of 8,000 members and that joinder of all members is impractical.

7. Plaintiffs are knowledgeable persons and plaintiffs will insure adequate representation of the interests of all purchasers and holders of securities of defendant 3 I Co. Their interests are coincidental with the interests of all members of the Class and they will fairly and adequately protect the interests of all absent members of the Class. They have no interests which are adverse to any members of the Class.

8. A Class action is superior to any other method available for fair and efficient adjudication of the controversy. It would be impossible to manage all possible actions or attempt to intervene into this action all damaged class members. Plaintiffs know of no difficulty likely to be encountered in management of this Class action.

9. Prosecution of separate actions by individual class members would create risk of inconsistent or varying adjudications with respect to various class members.

10. There are common questions of fact and law common to the Class.

11. The questions of law and fact common to the members of the Class predominate over any questions affecting individual members.

THE PARTIES AND THEIR ACTS

12. Plaintiff Robert R. Felton has been both a purchaser and a seller of Common Stock, Class A, par value $ .10 per share, issued by defendant 3 I Co. and is at present a holder of 2,000 shares. Plaintiff Edward J. Egan was the purchaser of 200 shares of Common Stock, Class A, par value $ .10 per share, issued by defendant 3 I Co.

13. Defendat James Nissan (hereinafter referred to as "Nissan") at all times herein mentioned was and still is a registered representative licensed to purchase and sell securities upon the exchanges and over the counter and was and still is an employee and/or officer of defendant Walston and Co., Inc.

14. Defendant Walston and Co., Inc. (hereinafter referred to as "Walston") at all times herein mentioned was and still is a foreign corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, and authorized to transact business in the State of New York, with its principal place of business in the City, County and State of New York, and is licensed and engaged as brokers and dealers in securities on the major exchanges and over the counter.

15. Defendant Walston at all times herein mentioned "made a market" and kept an inventory of the securities of defendant 3 I Co.

16. Defendant Walston at all times herein mentioned was either in a "long" or "short" position of the securities of defendant 3 I Co. and at the same time purchased and/or sold these securities to the plaintiff and certain members of the class.

17. Defendant 3 I Co./Information Interscience, Inc. (hereinafter referred to as "3 I Co.") was and still is a foreign corporation, duly organized and existing under and by virtue of the laws of the State of Pennsylvania with its principal place of business presently located in Houston, Texas.

18. Defendant 3 I Co. at all times herein mentioned issued securities known as Common Stock, Class A, par value $ .10 per share.

19. The aforesaid Common Stock of defendant 3 I Co., at all times herein mentioned, was sold to the public "over the counter" by certain designated dealers.

20. At all times herein mentioned, defendant Walston was one of the dealers who sold the aforesaid Common Stock of defendant 3 I Co. "over the counter" to the public.

21. Defendant 3 I Co. at all times herein mentioned, was a corporation registered with the Securities and Exchange Commission.

22. Defendant 3 I Co. at all times herein mentioned was a corporation filing periodic reports with the Securities and Exchange Commission.

23. Defendant Marine Midland Banks, Inc. and its subsidiaries Marine Midland Bank - Western, Marine Midland Bank - New York, Marine Midland Bank - Rochester, Marine Midland Bank - Central, Marine Midland Bank - Southern, Marine Midland Bank of

Southeastern New York, N.A., Marine Midland Bank - Northern, Marine Midland Bank - Eastern National Association, Marine Midland Bank - Chautaqua National Association and Marine Midland Tinker National Bank (hereinafter referred to as "Marine Midland") at all times herein mentioned were and still are banks duly organized and existing under the laws of New York State.

24. Defendant Dreyfus - Marine Midland, Inc. (hereinafter referred to as "Dreyfus") at all times herein mentioned was a partially-owned subsidiary of defendant Marine Midland and at all times herein mentioned was and still is engaged in managing institutional accounts, pension funds and profit sharing funds.

25. Defendant Joel Brownstein (hereinafter referred to as "Brownstein") at all times herein mentioned was an employee of Marine Midland Banks, Inc.

26. Defendant Brownstein at all times herein mentioned was employed in the fiduciary trust department maintained by defendant Marine Midland Banks, Inc.

27. One of the duties of defendant Brownstein's aforesaid employment was the financial analysis and/or financial evaluation of certain business corporations.

28. Another of the duties of defendant Brownstein's aforesaid employment was the preparation of Reports concerning certain business corporations based on his aforesaid financial analysis and/or financial evaluation.

29. Defendant Brownstein prepared a Report concerning defendant 3 I Co. during the year 1971.

30. Defendants Brownstein and Marine Midland had the aforesaid Report typed and/or reproduced.

31. Defendant Brownstein was acquainted with defendant Nissan prior to defendant Brownstein's preparation of the aforesaid Report concerning defendant 3 I Co.

32. At all times herein mentioned, defendant Nissan was a shareholder in the securities of defendant 3 I Co.

33. At all times herein mentioned, defendant Nissan traded in the securities of defendant 3 I Co.

34. At all times herein mentioned, defendant Nissan acted as a broker and recommended the purchase of defendant 3 I Co.'s Common Stock.

35. Defendant Nissan was a creditor of defendant 3 I Co.

36. Defendant Brownstein discussed the finances of defendant 3 I Co. with defendant Nissan prior to defendant Brownstein's preparation of this aforesaid Report.

37. At the time of his aforesaid discussions with defendant Nissan, defendant Brownstein knew that defendant Nissan owned securities of defendant 3 I Co.

38. At the time of his aforesaid discussions with defendant Nissan, defendant Brownstein knew that Walston was a dealer and "made a market" in the securities of defendant 3 I Co.

39. Defendant Brownstein informed defendant Nissan that he was preparing the aforesaid Report concerning defendant 3 I Co.

40. Defendant Brownstein's aforesaid Report detailed the financial history and the then present financial condition of defendant 3 I Co.

41. Defendant Brownstein's aforesaid Report misleadingly and falsely detailed the financial terms of defendant 3 I Co.'s purchase of a data bank license from defendant Excerpta Medica.

42. Defendant Brownstein's aforesaid Report misleadingly stated the earnings per share of the defendant 3 I Co. for the fiscal year ended June 30, 1970 as a loss in the amount of $0.25, whereas defendant 3 I Co. had previously reported a loss of $0.34.

43. Defendant Brownstein's aforesaid Report misleadingly, grossly overstated the estimate of earnings per share of defendant 3 I Co. for fiscal year ended June 30, 1971 as a profit in the amount of $0.40 on revenues estimated at $2,124,000.00

44. Defendant 3 I Co. sustained a loss of earnings of $0.33 per share for the fiscal year ended June 30, 1971 on revenues of $1,052,657.00.

45. Defendant Brownstein's aforesaid Report misleadingly, grossly overstated the estimate of earnings per share of defendant 3 I Co. for the fiscal year ended June 30, 1972, as a profit in the amount of $1.00+.

46. Defendant 3 I Co. sustained a loss of earnings of $2.42 per share for the fiscal year ended June 30, 1972.

47. Defendant Brownstein's aforesaid Report misleadingly and falsely stated the "'71 P/E Ratio" of 3 I Co. as "32.5x."

48. Defendant Brownstein mailed, delivered and/or distributed copies of the aforesaid Report to other firms and/or individuals in the business and investment community.

49. Defendants Marine Midland and Dreyfus by their officers, employees, and/or agents mailed, delivered and/or

distributed copies of the aforesaid Report to plaintiff Edward J. Egan, to other individuals, firms, banks and/or brokerage houses in the business and investment community.

50. Sometime prior to defendant Brownstein's and Marine Midland's publishing of the aforesaid Report, defendant Nissan advised and "tipped" to other firms, brokerage houses and individuals in the business and investment community of the advent of said Report and the purchasing of 3 I Co. common stock by defendant Marine Midland.

51. Defendant Nissan's aforesaid advising and tipping others of the aforesaid Report and the purchasing by defendant Marine Midland created a substantial increase in the market price of the securities of defendant 3 I Co.

52. Defendant Brownstein's aforesaid Report when published and/or distributed created a further substantial increase in the market price of the securities of defendant 3 I Co.

53. Defendants Marine Midland and Dreyfus, by their officers, employees, and/or agents "leaked" and/or "tipped" to plaintiff Edward J. Egan, to other individuals, firms, banks and/or brokerage houses in the business and investment community of the purchases by defendant Marine Midland and Dreyfus of 3 I Co. common stock.

54. At all times herein mentioned defendant Marine Midland and Dreyfus purchased and/or traded in defendant 3 I Co. common stock.

55. Defendants Marine Midland and Dreyfus benefited by their aforesaid leaking and tipping of their aforesaid purchasing of 3 I Co. common stock and by their distribution, mailing and/or

delivering of the aforesaid Brownstein Report.

56. Defendants Walston and Nissan benefited from Nissan's tipping of defendant Marine Midland's purchasing of 3 I Co. common stock and the advent of the aforesaid Brownstein Report.

57. Defendant Gerald L. Brodsky (hereinafter referred to as "Brodsky") at all times herein mentioned and until December 20, 1971 was the chief Officer and Director of the defendant 3 I Co.

58. Defendant Brodsky at all times herein mentioned and until December 20, 1971 was the major stockholder in defendant 3 I Co. and was referred in the aforesaid annual 3 I Co. Reports to the Securities and Exchange Commission as the "parent" of the defendant 3 I Co.

59. Defendant Brownstein was acquainted with defendant Brodsky prior to defendant Brownstein's preparation of the aforesaid Report concerning defendant 3 I Co.

60. Defendant Brownstein discussed the finances of defendant 3 I Co. with defendant Brodsky prior to defendant Brownstein's preparation of this aforesaid Report.

61. At the time of his aforesaid discussions with defendant Brodsky, defendant Brownstein knew that defendant Brodsky was the major stockholder in defendant 3 I Co.

62. Defendant Brownstein advised defendant Brodsky that he was preparing the aforesaid Report concerning defendant 3 I Co.

63. Defendant Brownstein's aforesaid Report contained untrue statements of material facts and omitted to state material

facts necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading, as to the financial terms of the defendant 3 I Co.'s purchase of the data bank license, the earnings per share of 3 I Co. for fiscal year ended June 30, 1970, the grossly overstated and unfounded estimated revenues and earnings per share of 3 I Co. for fiscal year ended June 30, 1971 and the '71 P/E ratio of 3 I Co. common stock.

64. Defendant Brownstein's aforesaid Report omitted the fact that defendant 3 I Co.'s chief officer and major stockholder defendant Brodsky, was annually converting large blocks of Common Stock, Class B into Common Stock, Class A, and that defendant Brodsky was selling same to unsuspecting purchasers.

65. Defendant Nissan at all times herein mentioned purchased and sold the securities of defendant 3 I Co. for his own account.

66. Defendant Nissan was a creditor of defendant 3 I Co. and defendant Nissan converted his loan into 50,000 shares of defendant 3 I Co. paying only two ($2.00) dollars per share thereof.

67. Defendant Nissan at all times herein mentioned was acquainted with defendant Brodsky.

68. Defendant Nissan at all times herein mentioned was acquainted with defendant Brownstein.

69. Defendant Nissan obtained and/or received a copy of the aforesaid Brownstein Report on defendant 3 I Co.

70. Defendant Nissan discussed the finances of defendant 3 I Co. with defendant Brownstein prior to defendant Brownstein's preparation of this aforesaid Report.

71. Defendant Brodsky discussed the finances of defendant 3 I Co. with defendant Brownstein prior to Brownstein's preparation of this aforesaid Report.

72. Defendant Brodsky obtained and/or received a copy of the aforesaid Brownstein Report on defendant 3 I Co.

73. Defendant Brodsky by letter dated June 23, 1971 wrote to defendant Brownstein advising him of errors in his aforesaid Report.

74. Defendant Brownstein prepared "Bulletins" in August, September and October, 1971 containing additional 3 I Co. corporate and financial information learned by Brownstein after his preparation of the aforesaid Report.

74 (a) Defendant Marine Midland and Dreyfus by their Officers, employees and/or agents, mailed, delivered and/or distributed copies of the aforesaid Bulletins to plaintiff Edward J. Egan, to other individuals, firms, banks and/or brokerage houses in the business and investment community.

75. Defendant Brownstein never disclosed his receipt of defendant Brodsky's aforesaid letter in any of these Bulletins and despite Brodsky's warnings of errors in his Report, he recommended continued buying of defendant 3 I Co. common stock.

76. Defendant Brodsky owned 154,475 shares of Common Stock, Class B of defendant 3 I Co. on December 1, 1969.

77. Defendant Brodsky held 38,4% of voting power of defendant 3 I Co. on December 1, 1969.

78. The aforesaid Common Stock, Class B, of defendant 3 I Co., owned by defendant Brodsky was not available for sale on the "open market."

79. Defendant Brodsky at all times herein mentioned periodically converted large blocks of shares of the aforesaid Common Stock, Class B into Common Stock, Class A.

80. The aforeaid Common Stock, Class A, of defendant 3 I Co. received by defendant Brodsky was sold by defendant Brodsky to unsuspecting pruchasers.

81. Defendant Brodsky owned 83,175 shares of aforesaid Common Stock, Class B and 24,700 shares of aforesaid Common Stock, Class A on October 15, 1971.

82. Defendant Brodsky resigned as the Chairman of the Board of Directors of defendant 3 I Co. on December 20, 1971.

83. As part of his termination agreement with defendant 3 I Co., defendant Brodsky gave 25,000 shares of 3 I Co. Common Stock, Class A to defendant 3 I Co.

84. As part of his termination agreement with defendant 3 I Co. defendant Brodsky gave 50,000 shares of Common Stock of Datapro Research Corporation to defendant 3 I Co.

85. Defendant Maurice Brodsky, (hereinafter referred to as "Maurice") was the President of American Micromation Industries, Inc. prior to October 13, 1971.

86. Defendant Maurice was the brother of defendant Brodsky.

87. Prior to October 13, 1971, defendant Maurice was a shareholder in the aforesaid Common Stock, Class A of defendant 3 I Co.

88. Prior to October 13, 1971, defendant Maurice owned

warrants to purchase Common Stock, Class A of defendant 3 I Co.

89. Prior to October 13, 1971, defendant Maurice was a co-guarantor of a certain defendant 3 I Co. bank loan.

90. Prior to October 13, 1971, defendant 3 I Co. had purchased 29% of the Capital Stock of aforesaid American Micromation Industries, Inc. for the sum of $17,500.00.

91. On October 13, 1971, defendant 3 I Co. purchased the remaining 71% of the Capital Stock of the aforesaid American Micromation Industries, Inc. with Common Stock, Class A of defendant 3 I Co. valued at $605,000.00.

92. In addition to the aforesaid Common Stock and as part of the aforesaid purchase of the remaining interest in the aforesaid American Micromation Industries, Inc., defendant 3 I Co. assumed liability for $105,600.00 in convertible debentures for which it issued 3 I Co. convertible debentures in equal exchange.

93. Defendant Maurice at the time of the aforesaid purchase by defendant 3 I Co., although cancelling some of his shares in American Micromation Industries, Inc., still owned 45,000 shares thereof.

94. Defendant 3 I Co. paid the purchase price of $505,729.00 for the "intangible assets" of said American Micromation Industries, Inc.

95. The aforesaid purchase of American Micromation Industries, Inc. was worthless and defendant 3 I Co. within several months thereafter wrote off the aforesaid cost of this purchase as a complete loss.

96. On June 30, 1971, defendant 3 I Co. agreed to purchase all of the assets of Information Company of America, I.C.A. and Information Corporation of America with Common Stock, Class A of defendant 3 I Co. valued at $3,053,857.00.

97. The aforesaid purchase agreement was contingent upon the dissolution of a partnership known as Information Company of America, the Partnership and the purchase of the limited partners' interest in the Partnership in exchange for the Common Stock of Information Corporation of America.

98. Defendant 3 I Co. paid the purchase price of $2,960,904.00 for the "intangible assets" of Information Company of America, I.C.A. and Information Corporation of America.

99. Prior to June 30, 1971, and as part of the aforesaid purchase negotiations, defendant 3 I Co. received auditor's certificates and financial statements concerning the earnings and financial condition of Information Company of America, I.C.A., Information Company of America, the Partnership and Information Corporation of America.

100. The aforesaid financial statements and auditor's certificate dated June 21, 1971 stated Information Company of America, the Partnership had sustained losses from April 29, 1969, the date operations commenced, to date.

101. The aforesaid auditor's certificate stated that a significant amount of the assets of Information Company of America, I.C.A. and Information Corporation of America were invested in Information Company of America, the Partnership.

102. The aforesaid auditor's certificate and financial statements stated that at December 31, 1970, Information Company of America, the Partnership, carried an "asset", deferred development costs, at $60,411.00, which was equivalent to approximately 40% of its total assets.

103. The aforesaid auditor's certificate and financial statements stated that at December 31, 1970, the Information Company of America, I.C.A. carried an "asset", deferred development costs, at $12,500.00, which was equivalent to approximately 13% of its total assets.

104. The aforesaid auditor's certificate stated that Information Company of America, the Partnership was in need of additional working capital for its operations.

105. Information Corporation of America was incorporated on March 7, 1968 and had no operations since that date, other than marketable securities.

106. The balance sheet of Information Corporation of America on March 31, 1971 showed total assets of $36,290.00 of which there were $25,000.00 in marketable securities and $10,000.00 investment in Information Company of America, the Partnership.

107. The balance sheet of Information Company of America, I.C.A.,' showed a Deficit in the amount of $50,043.00 on December 31, 1970.

108. The statements of operations of Information Company of America, the Partnership, stated a loss for the year 1970 in the amount $55,818.00 and a loss for the year 1969 in the amount of $95,793.00.

109. Despite all the aforesaid negative information, including losses, deficits and inactivity, defendant 3 I Co. entered into the aforesaid purchase agreement of June 30, 1971.

110. On June 30, 1971 defendants Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher were each Officers and/or Directors of either or both of Information Company of America, I.C.A. and Information Corporation of America.

111. On June 30, 1971, aforesaid defendants Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher were all shareholders of Information Company of America, I.C.A. and Information Corporation of America.

112. On or about September 1, 1971, defendant Arthur W. Elias became President and Director of defendant 3 I Co., defendant Marvin S. Riesenbach became Vice President, Treasurer and a Director of defendant 3 I Co. and defendants Marvin Schiller and Irving H. Sher became Vice Presidents of defendant 3 I Co.

113. The aforesaid purchases of Information Company of America, I.C.A. and Information Corporation of America were worthless and defendant 3 I Co. within several months thereafter wrote off the aforesaid cost of these purchases a complete loss.

114. On September 19, 1969 defendant 3 I Co. entered into an agreement with defendants Medische Referatan (Excerpta Medica) N.V., Infonet (Excerpta Medica - Rescona) N.V. and Eltrac (infonet) N.V. for the "purchase" of a "data bank license."

115. The aforesaid agreement, and thereafter under an Amendatory Agreement dated January 14, 1971, included defendant Stichting Excerpta Medica (Excerpta Medica Foundation) as a party thereto since Stichting Excerpta Medica (Excerpta Medica Foundation)

controlled the aforesaid three (3) defendant corporations.

116. On September 19, 1969, defendant Stichting Excerpta Medica (Excerpta Medica Foundation) signed an "Indemnity Agreement" with defendant 3 I Co., in effect indemnifying defendant 3 I Co. as to the performance of its aforesaid subsidiaries under the aforesaid "purchase" agreement.

117. Defendants Medische Referatan (Excerpta Medica) N.V., Infonet (Excerpta Medica - Rescona) N.V. and Eltrac (Infonet) N.V. (hereinafter referred to as "Excerpta Medica") at all times herein mentioned were and still are Netherland corporations, doing business in the United States of America with the United States Food and Drug Administration and in sale of EM publications.

118. Defendant Stichting Excerpta Medica (Excerpta Medica Foundation) (hereinafter also referred to as "Excerpta Medica") at all times herein mentioned was a Netherlands corporation doing business in the State of New York and New Jersey.

119. Defendant Main Lafrentz and Co. (hereinafter referred to as "Lafrentz") at all times herein mentioned were and still are independent certified public accountants.

120. Defendant Lafrentz audited the financial records of defendant 3 I Co. for fiscal year ended June 30, 1970.

121. Defendant Lafrentz examined the financial statements of defendant 3 I Co. for fiscal year ended June 30, 1970.

122 The balance sheet of defendant 3 I Co. for fiscal year ended June 30, 1970 listed therein as an "asset", "data bank licenses, at cost (Note 1) $1,028,606.00", stating $1,000,000.00

as the purchase cost of defendant Excerpta Medica's data bank license.

123. This "asset", i.e. data bank license, was equivalent to 62% of the entire assets of defendant 3 I Co. for fiscal year 1970.

124. Aforesaid "Note 1" relating to the aforesaid data bank license was contained in "Notes to Consolidated Financial Statements" and stated, "In September, 1969, the Company entered into an agreement, subsequently amended in June, 1970, with Excerpta Medica Foundation, a foreign non-profit corporation, for the exclusive right within the United States to market information services from Excerpta's data bank of biomedical information. The consideration for this right is $1,000,000, including 46,666 shares of Class A common stock issued in October, 1969, which the Company can be required to purchase at $15.00 per share in October, 1971, and 30,000 shares of Class A common stock to be issued on December 1, 1970 which the Company can be required to purchase at $5.00 per share in July, 1971. The shares to be issued on December 1, 1970 have been reflected as outstanding in the accompanying financial statements. At its option, the Company can extend this agreement starting July 1, 1971 and thereafter until 1984 by the payment of additional considerations. An amendment to this agreement affecting the extension of certain dates and changes in additional consideration is currently being negotiated."

125. The aforesaid balance sheet of defendant 3 I Co. for fiscal year ended June 30, 1970 stated therein that the "cost"

of this purchase involved "capital in excess of par value" of $842,333.00.

126. As part of their audit of the records of defendant 3 I Co. and using generally accepted standard procedures, defendant Lafrentz was required to read the agreements concerning defendant 3 I Co.'s "purchase" of this data bank license.

127. The aforesaid agreement of September 19, 1969 between defendant Excerpta Medica and defendant 3 I Co. involved 46,666 3 I Co. shares.

128. Although the aforesaid agreement of September 19, 1969 gave defendant Excerpta Medica the "right" to require defendant 3 I Co. to "repurchase" these shares at $15.00 per share, the aforesaid Note 1 reflected the real intent of the parties, that defendant 3 I Co. "can be required to purchase at $15.00 per share in October, 1971. . .".

129. These "shares" held by defendant Excerpta Medica were never repurchased by defendant 3 I Co. and in the Report for fiscal 1972 by defendant 3 I Co. filed with The Securities and Exchange Commission, these "shares" were characterized as "stock rights, previously granted to certain stockholders to require the Company (3 I Co.) to repurchase 46,666 shares of its Class A common stock (which) have terminated during the year ended June 30, 1972."

130. Defendant Fred Von Eugen (hereinafter referred to as "Von Eugen") was involved in securing the aforesaid agreement between defendants Excerpta Medica and 3 I Co. and for his efforts

defendant 3 I Co. agreed by letter dated September 19, 1969 to pay Von Eugen the total amount of $300,000.00; i.e. $150,000.00 with the agreement and $150,000.00 180 days thereafter.

131. The "aggregate" consideration for the "purchase at cost" of the data bank license of $1,000,000.00 was determined by defendant 3 I Co. as $300,000.00 for defendant Von Eugen plus 46,666 3 I Co. shares for defendant Excerpta Medica.

132. Upon signing the aforesaid letter agreement with defendant Von Eugen, defendant 3 I Co. never reflected on its balance sheet as a current liability thereunder of $150,000.00.

133. Defendant 3 I Co. never paid the balance of $150,000.00 "due" to defendant Von Eugen or on about April 27, 1970.

134. This "balance due to Von Eugen" of $150,000.00 was changed into 30,000 shares of 3 I Co.'s Common Stock, Class A for defendant Von Eugen by a second letter agreement dated June 15, 1970, which provided for the issuance of these shares on December 1, 1970.

135. The aforesaid 30,000 shares were not issued to defendant Von Eugen prior to December 1, 1970.

136. The balance sheet of defendant 3 I Co. for fiscal year ended June 30, 1970 incorrectly understated the current liability of defendant 3 I Co. by one hundred fifty thousand ($150,000.00) dollars.

137. The balance sheet of defendant 3 I Co. for fiscal year ended June 30, 1970 and "Note 6" to Consolidated Financial Statements incorrectly and misleadingly stated that "stock issued" for the data bank license was in the amount of $7,667.00 of Common Stock, Class A and in the amount of $842,333.00 of Capital in

excess of par value.

138. Although this said second letter agreement gave defendant Von Eugen the "right" to require defendant 3 I Co. to "repurchase" these 30,000 shares at $5.00 per share, the aforesaid Note 1 once again reflected the real intent of the parties, that defendant 3 I Co. "can be required to repurchase 30,000 shares of Class A common stock. . .".

139. These "shares" held by Von Eugen were never repurchased by defendant 3 I Co. and in the Report for fiscal 1972 of defendant 3 I Co. filed with The Securities and Exchange Commission, these "shares" were characterized as "stock rights" wherein defendant 3 I Co. "has entered into an agreement with a stockholder to issue 7,500 shares of its Class A common stock in exchange for cancellation of that stockholder's rights to require the Company (3 I Co.) to repurchase or register 30,000 shares."

140. The total consideration for the acquisition by defendant 3 I Co. of the aforesaid data bank license was $150,000.00 plus 7,500 shares.

141. There was never purchase "at cost" by defendant 3 I Co. of Excerpta Medica's data bank license for $1,000,000.00.

142. Defendant Lafrentz issued its Certificate (Report) and its Notes to Consolidated Financial Statements of defendant 3 I Co. for fiscal year ended June 30, 1970.

143. Defendant Lafrentz' aforesaid Certificate (Report) and its Notes to Consolidated Financial Statements were contained in defendant 3 I Co.'s Annual Report for fiscal year ended June 30 1970.

144. Defendant Lafrentz' aforesaid Certificate (Report) and its Notes to Consolidated Financial Statements were contained in defendant 3 I Co.'s Form 10 K for fiscal year ended June 30, 1970 filed with Securities and Exchange Commission.

145. Defendant Lafrentz in its aforesaid Certificate (Report) and its aforesaid Notes misleadingly omitted the material facts concerning the aforesaid letter agreements between defendants Von Eugen and 3 I Co.

146. Defendant Lafrentz in this aforesaid Certificate (Report) and its aforesaid Notes misleadingly omitted the material facts that defendant 3 I Co. had failed to pay defendant Von Eugen the second payment of $150,000.00.

147. Defendant Lafrentz in its Certificate (Report) and aforesaid Notes misrepresented material facts and misleadingly omitted material facts concering the purchase "at cost" of the data bank license and defendant Lafrentz misleadingly failed to disclose the major misstatements and omissions of material facts on the financial statements of 3 I Co.

148. Defendant Lafrentz in its Certificate (Report) and its aforesaid Notes misleadingly failed to disclose the fact that the current liabilities on the defendant 3 I Co. balance sheet as of June 30, 1970 was incorrectly understated by one hundred fifty thousand ($150,000.00) dollars.

149. Defendant Lafrentz in its Certificate (Report) and its aforesaid Notes misleadingly omitted material facts and misleadingly failed to disclose the fact that the financial statements of defendant 3 I Co. as of June 30, 1970 incorrectly and misleadingly recorded a total of eight hundred fifty thousand ($850,000.00) dollars common stock, Class A and capital in excess of par value in connection with agreement with Excerpta Medica Foundation.

150. Defendant Lafrentz permitted defendant 3 I Co. to materially inhance its balance sheet assets using legended stock in effect stock rights, as the purchase of an "asset at cost".

151. Defendant Excerpta Medica never received any money under the terms of its aforesaid agreement with defendant 3 I Co.

152. Defendant Excerpta Medica never required defendant 3 I Co. to repurchase the 46,666 shares.

153. Defendant Excerpta Medica accordingly has received no consideration from defendant 3 I Co. for its data bank license.

154. Defendant Von Eugen's total consideration from defendant 3 I Co. for his services in connection with the data bank license was $150,000.00 and 7,500 shares of 3 I Co. Common Stock, Class A.

155. The aforesaid data bank license was worthless to defendant 3 I Co. and in fiscal 1972, defendant 3 I Co. wrote off the $1,000,000.00 "cost" as a complete loss.

156. Defendant Peter Warren (hereinafter referred to as "Warren") at all times herein mentioned was an employee and a Director of defendant Excerpta Medica.

157. Defendant Warren was designated by defendant Excerpta Medica as its attorney-in-fact and agent under the aforesaid agreement of September 19, 1969.

158. Defendant Warren was a Director of defendant 3 I Co.

159. Pursuant to an Agreement and Plan of Reorganization dated April 25, 1969 and Amendment thereto on October 21, 1969 between defendant 3 I Co., Scientific Literature Corporation, Scientific Literature Consultants, Inc. and defendants S. Kim Kessler and Geraldine Kessler (hereinafter together referred to as "Kessler") Scientific Literature Consultants, Inc. was merged into Scientific

Literature Corporation, a subsidiary of defendant 3 I Co.

160. Pursuant to the aforesaid Agreement, 32,000 shares of defendant 3 I Co.'s Common Stock, Class A were issued to shareholders of Scientific Literature Consultants, Inc. and an additional 12,800 shares were held in an escrow fund pending Scientific Literature Corporation's achieving certain earnings during the period of its operations from date of the merger through June 30, 1971.

161. The aforesaid agreement also provided that the shareholders of Scientific Literature Consultants, Inc. might become entitled to receive up to 44,800 additional shares of 3 I Co. stock dependent upon Scientific Literature Corporation's earning record during the aforesaid period.

162. Defendants Kessler owned a substantial amount of shares in Scientific Literature Consultants, Inc.

163. After the aforesaid agreement defendant's Kessler were employed by defendant 3 I Co. to manage Scientific Literature Corporation.

164. For the year ended June 30, 1970, Scientific Literature Corporation sustained a net earnings loss.

165. Despite the aforesaid loss of earnings by Scientific Literature Corporation for the year ended June 30, 1970 and with the aforesaid provisions of the aforesaid Agreement as to the earnings of Scientific Literature Corporation to June 30, 1971, defendant 3 I Co. entered into a "Second Amendment", dated November 2, 1970, whereby the earnings paragraph of the original Agreement was declared null and void and the additional 44,800 shares

of 3 I Co. stock were issued to the shareholders of Scientific Literature Consultants, Inc.

166. Defendant Lafrentz in its aforesaid Certificate (Report) and its aforesaid Notes omitted the fact that Scientific Literature Corporation had sustained a net earnings loss for the year ended June 30, 1970.

167. Defendant 3 I Co. has never filed a report with The Securities and Exchange Commission that the earnings of Scientific Literature Corporation during the period of its operations from the date of the merger through June 30, 1971 was profitable, in support of its "Second Amendment."

168. Plaintiff Robert R. Felton did not learn the untruths, omissions and/or aforesaid actions of the aforesaid defendants until after defendant 3 I Co. filed its annual 10 K Report for its fiscal year ended June 30, 1972. In this Report, defendant 3 I Co. wrote off its worthless acquisitions, as aforesaid: American Micromation Industries, Inc., Information Company of America, I.C.A., Information Corporation of America and the data bank license. These write offs in fiscal year ended June 30, 1972 as "charged extraordinary items" totalled $4,303,340.00. Furthermore defendant 3 I Co. disclosed the nature of defendant Nissan's "insider" involvement as a 3 I Co. creditor and purchaser of a large block of 3 I Co. stock at a minimal cost. Plaintiff Robert R. Felton also became aware of the omissions and untruths in defendant Brownstein's aforesaid Report in the light of defendant 3 I Co.'s aforesaid annual 10 K Report.

169. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendants 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren participated singly, acted in concert and/or in furtherance of their common fraudulent combination employed the scheme of a purchase agreement for the data bank license to defraud plaintiffs and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination engaged in a course of business relating to said data bank license which operated as a fraud on plaintiffs and the class; aforesaid defendants with the knowledge, assistance and connivance of each other did engage in the aforesaid purchase agreement of the data bank licnese scheme and conspiracy and/or act, practice or course of business and the material misrepresentations, omissions and untruths thereof, to willfully directly or indirectly, defraud plaintiffs and the class by affecting the value of the 3 I Co. Common Stock and thus affecting the purchase/sale of 3 I Co. Common Stock and by so doing caused plaintiffs and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; aforesaid defendants falsely stated consideration for this data bank license purchase; aforesaid defendants caused the balance sheet of defendant 3 I Co. to be grossly inflated and

exaggerated both as to assets and capital, so as to mislead plaintiffs and the class; defendants 3 I Co., Brodsky, Excerpta Medica and Warren falsely and/or misleadingly specified as the consideration for the data bank license purchase agreement 46,666 3 I Co. shares, whereas their intention was to issue 46,666 stock rights which rights they further intended never to use; defendants 3 I Co., Brodsky and Von Eugen falsely and/or misleadingly specified as the consideration for Von Eugen's services in connection with the aforesaid purchase agreement 30,000 3 I Co. shares, whereas their intention was to issue 30,000 stock rights which rights they never fully intended to use; aforesaid defendants 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren participated singly, acted in concert and/or in furtherance of their common fraudulent combination made false and misleading statements of material facts and omitted to state material facts which were necessary to be made in order to make such statements not misleading; aforesaid defendants participated singly, acted in concert and/or in furtherance of the common fraudulent action used this worthless data bank license so as to defraud, deceive and/or mislead plaintiffs and the class; said defendants Excerpta Medica, Von Eugen and Warren aided and abetted defendants 3 I Co. and Brodsky by nondisclosure and silence and inaction as to the aforesaid misrepresentations and omissions of material facts made by defendants 3 I Co. and Brodsky and by the aforesaid misrepresentations and omissions of material facts made by defendants Excertpa Medica, Von Eugen and Warren so as to mislead plaintiffs and the class; defendants Excerpta Medica, Von Eugen and

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Warren knew or should have known of defendants 3 I Co. and Brodsky's aforesaid actions to defraud, deceive and/or mislead plaintiffs and the class.

170. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

171. As the result of the aforesaid actions of the aforesaid defendants thus affecting the market price of the 3 I Co. Common Stock, plaintiffs and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co. without knowledge of the facts hereinbefore alleged.

172. Plaintiffs and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT II

173. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendants 3 I Co., Brodsky and Kessler participated singly, acted in concert and/or in furtherance of their common fraudulent combination employed a scheme to enter into the aforesaid "Second Amendment" to their Agreement so as to defraud plaintiffs and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent

combination engaged in a course of business relating to this "Second Amendment" which operated as a fraud on plaintiffs and the class; aforesaid defendants with the knowledge, assistance and connivance of each other did engage in the aforesaid "Second Amendment" to their Agreement scheme and conspiracy and/or act, practice or course of business and the material misrepresentations, omissions and untruths thereof, to willfully, directly and indirectly, defraud plaintiffs and the class by affecting the value of the 3 I Co. Common Stock and thus affecting the purchase and sale of 3 I Co. Common Stock and by so doing caused plaintiffs and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; despite the loss for the Scientific Literature Corporation for fiscal year 1970 aforesaid defendants entered into "Second Amendment" in order to defraud, deceive and/or mislead plaintiffs and the class; and aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination made false and misleading statements of material facts and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiffs and the class.

174. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

175. As the result of the aforesaid actions of the aforesaid defendants thus affecting the market price of the 3 I Co. common stock, plaintiffs and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co. without knowledge of the facts hereinbefore alleged.

176. Plaintiffs and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT III

177. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the Certificate (Report) and the aforesaid Notes of the defendant Lafrentz misrepresented material facts and misleadingly omitted material facts concerning the purchase "at cost" of the data bank license and defendant Lafrentz in its Certificate (Report) and its aforesaid Notes misleadingly failed to disclose the major misstatements and omissions of material facts on the financial statements of 3 I Co.; defendant Lafrentz in its aforesaid Certificate (Report) and its aforesaid Notes misleadingly omitted the material facts concerning the aforesaid letter agreements between defendants Von Eugen and 3 I Co.; defendant Lafrentz in its aforesaid Certificate (Report) and its aforesaid Notes misleadingly omitted the material fact that defendant 3 I Co. had failed to pay defendant Von Eugen the aforesaid second payment of $150,000.00;

defendant Lafrentz in its Certificate (Report) and its aforesaid Notes misleadingly failed to disclose the fact that current liabilities on the defendant 3 I Co. balance sheet as of June 30, 1970 was incorrectly understated by one hundred fifty thousand ($150,000.00) dollars; defendant Lafrentz in its Certificate (Report) and its aforesaid Notes misleadingly omitted material facts and misleadingly failed to disclose the fact that the financial statements of defendant 3 I Co. as of June 30, 1970 incorrectly and misleadingly recorded a total of eight hundred fifty thousand ($850,000.00) dollars, common stock, Class A and capital in excess of par value, in connection with agreement with Excerpta Medica Foundation; defendant Lafrentz failed to disclose in its Certificate (Report) and its aforesaid Notes the fact that Scientific Literature Corporation had sustained a loss of earnings for fiscal year 1970 as applicable to the aforesaid "Second Amendment" between defendant 3 I Co., Brodsky and Kessler; defendant Lafrentz in its Certificate (Report) and its aforesaid Notes made misrepresentations of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the statements under which they were made, not misleading, and in so doing defendant Lafrentz affected the value of the 3 I Co. common stock, thus affecting the purchase and sale of 3 I Co. common stock and by so doing caused plaintiffs and the class to purchase said 3 I Co. common stock without knowledge of the facts hereinbefore alleged; defendant Lafrentz aided and abetted the omissions of material facts and the non-disclosures of material facts of defendant 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren as to the aforesaid

purchase agreement of the data bank license in order to defraud, deceive and/or mislead plaintiffs and the class; defendant Lafrentz aided and abetted the misrepresentations of material facts of defendants 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren as to the aforesaid purchase agreement in order to defraud, deceive and/or mislead plaintiffs and the class; defendant Lafrentz aided and abetted the omissions of material facts and the non-disclosures of material facts of defendants 3 I Co., Brodsky and Kessler as to the aforesaid "Second Amendment" in order to defraud, deceive and/or mislead plaintiffs and the class; defendant Lafrentz aided and abetted the misrepresentations of material facts of defendants 3 I Co., Brodsky and Kessler as to the aforesaid "Second Amendment" in order to defraud, deceive and/or mislead plaintiffs and the class; defendant Lafrentz knew or should have known of the misrepresentations of material facts and omissions and non-disclosures of material facts of defendants 3 I Co., Brodsky, Excerpta Medica, Von Eugen and Warren as to the aforesaid data bank purchase agreement; and defendant Lafrentz knew or should have known of the misrepresentations of material facts and omissions and non-disclosures of material facts of defendants 3 I Co., Brodsky and Kessler as to their "Second Amendment" to their original Agreement.

178. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

179. As the result of the aforesaid actions of the aforesaid defendant thus affecting the market price of the 3 I Co. common stock, plaintiffs and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co. without knowledge of the facts hereinbefore alleged.

180. Plaintiffs and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT IV

181. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, defendants 3 I Co., Brodsky and Maurice participated singly, acted in concert and/or in furtherance of their common fraudulent combination employed a scheme to purchase the remaining interest in American Micromation Industries, Inc. so as to defraud plaintiff Robert R. Felton and certain members of the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination engaged in a course of business in purchasing the remaining interest in American Micromation Industries, Inc. which operated as a fraud on plaintiff Robert R. Felton and certain members of the class; aforesaid defendants with the knowledge, assistance and connivance of each other did engage in the purchase of the worthless remaining interest in American Micromation Industries, Inc. scheme and conspiracy and/or act, practice or course of business and the material misrepresentations,

omissions and untruths thereof, to willfully, directly and indirectly, defraud plaintiff Robert R. Felton and certain members of the class by affecting the value of the 3 I Co. Common Stock and thus affecting the purchase and sale of 3 I Co. Common Stock and by so doing caused plaintiff Robert R. Felton and certain members of the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; despite the fact that aforesaid defendants knew that the purchase price of the aforesaid remaining interest was grossly disproportionate to the original purchase of an interest therein, aforesaid defendants consummanted the purchase in order to defraud, deceive and/or mislead plaintiff Robert R. Felton and certain members of the class; aforesaid defendants failed to act at "arms-length" for the purchase negotiations in order to defraud, deceive and/or mislead plaintiff and the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination made false and misleading statements of material facts and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiff Robert R. Felton and certain members of the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination purchased this worthless remaining interest in aforesaid American Micromation Industries so as to defraud, deceive, and/or mislead plaintiff Robert R. Felton and certain members of the class.

182. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas

said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

183. As the result of the aforesaid actions of the aforesaid defendants, plaintiff Robert R. Felton and certain members of the class were induced to purchase the Common Stock, Class A of defendant 3 I Co. without knowledge of the facts hereinbefore alleged.

184. Plaintiff Robert R. Felton and certain members of the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT V

185. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendants 3 I Co., Brodsky, Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher participated singly, acted in concert and/or in furtherance of their common fraudulent combination employed a scheme to purchase the assets of Information Company of America, I.C.A and Information Corporation of America so as to defraud plaintiff Robert R. Felton and certain members of the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of their common fraudulent combination engaged in a course of business in purchasing the assets of these aforesaid corporations which operated as a fraud on plain-

tiff Robert R. Felton and certain members of the class; aforesaid defendants with the knowledge, assistance and connivance of each other did engage in the aforesaid purchase of the worthless assets of these aforesaid corporations scheme and conspiracy and/or act, practice or course of business and the material misrepresentations, omissions and untruths thereof, to willfully, directly and indirectly, defraud plaintiff Robert R. Felton and certain members of the class by affecting the value of the 3 I Co. Common Stock and thus affecting the purchase and sale of 3 I Co. Common Stock and by so doing caused plaintiff Robert R. Felton and certain members of the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; despite the fact that these defendants knew that one of these corporations was inactive and that the other corporation was in deficit, aforesaid defendants consummated this purchase in order to defraud, deceive and/or mislead plaintiff Robert R. Felton and certain members of the class; aforesaid defendants failed to act a "arms-length" for the purchase negotiations in order to defraud, deceive and/or mislead plaintiff Robert R. Felton and certain members of the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of the common fraudulent combination made false and misleading statements of material facts and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiff Robert R. Felton and certain members of the class; aforesaid defendants participated singly, acted in concert and/or in furtherance of the common fraudulent combination purchasing these worthless assets of these aforesaid worthless corporations so as to defraud, deceive and/or mislead plaintiff Robert R. Felton and

certain members of the class.

186. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

187. As the result of the aforesaid actions of the aforesaid defendants, plaintiff Robert R. Felton and certain members of the class were induced to purchase the Common Stock, Class A of defendant 3 I Co. without knowledge of the facts hereinbefore alleged.

188. Plaintiff Robert R. Felton and certain members of the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT VI

189. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendants Nissan and Walston employed schemes and/or artifices to defraud plaintiffs and the class; defendant Nissan participated singly, acted in concert and/or in furtherance of various fraudulent combinations with defendants Brownstein, 3 I Co. and Brodsky, employed schemes and/or artifices to defraud plaintiffs and the class; defendants Nissan and Walston engaged in acts, practices and/or a course of business which operated as a fraud on plaintiffs and the class; defendant Nissan participated singly

acted in concert and/or in furtherance of various combinations with defendants Brownstein, 3 I Co. and Brodsky, engaged in acts, practices and/or a course of business which operated as a fraud on plaintiffs and the class; defendant Nissan in furtherance of the various fraudulent combinations into which these aforesaid defendants had entered with intent to deceive and/or defraud plaintiffs and the class discussed the finances of defendant 3 I Co. with defendant Brownstein and recommended the financial prospects of defendant 3 I Co. to defendant Brownstein prior to his preparation of a Report on defendant 3 I Co. and advised and "tipped" to other firms, brokerage houses and individuals in the business and investment community of the advent of said Report; defendant Nissan in furtherance of the various fraudulent combinations into which all all these aforesaid defendants had entered did engage in a scheme and conspiracy and/or act, practice or course of business and the material misrepresentations, omissions and untruths thereof, to willfully, directly and indirectly, defraud plaintiffs and the class by affecting the value of the 3 I Co. Common Stock and by so doing caused plaintiffs and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged; defendants Nissan and Walston were in a collusive position as to defendant 3 I Co. since defendant Nissan was a shareholder and creditor thereof and was employed as a broker by defendant Walston, a dealer and "market-maker" in defendant 3 I Co.'s securities; defendants Nissan and Walston in their relationships with these aforesaid defendants were insiders with private access to 3 I Co.; defendants Nissan and Walston traded and dealt in the securities of 3 I Co.

for their own profit and benefit while possessing, utilizing and "tipping" insider information; defendant Nissan participated singly, acted in concert and/or in furtherance of the various fraudulent combinations with defendants Brownstein, 3 I Co. and Brodsky made false and/or misleading statements of material facts and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiffs and the class; defendant Nissan knew that his statements as to the finances of defendant 3 I Co. were untrue and that his evaluations of 3 I Co.'s then present financial condition and business operations were incorrect and his estimates of future earnings and prospects were grossly overstated and unfounded so as to defraud, deceive and/or mislead plaintiffs and the class; the defendant Walston failed to exercise reasonable supervision over defendant Nissan to prevent all the aforesaid; defendant Walston permitted defendant Nissan to control a major portion of trading 3 I Co. securities; defendant Walston permitted defendant Nissan to be in a collusion position in permitting defendant Nissan to act as a broker in 3 I Co. securities while he was a shareholder and creditor of 3 I Co.; defendant Walston by its silence and inaction permitted defendant Nissan to defraud, deceive and/or mislead plaintiffs and the class.

190. As the result of the aforesaid actions of the aforesaid defendants, the common stock of defendant 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

191. As the result of the aforesaid actions of the aforesaid defendants thus affecting the market price of the 3 I Co. common stock, plaintiffs and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co. without knowledge of the facts hereinbefore alleged.

192. Plaintiffs and the class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

COUNT VII

193. That at all times hereinbefore mentioned and as to all facts hereinbefore alleged, and in violation of The Securities Act of 1933, The Securities Exchange Act of 1934, the Rules and Regulations of The Securities and Exchange Commission promulgated thereunder, the laws of the State of New York and common law principles, the defendant Brownstein employed a scheme to defraud plaintiffs and the class; defendant Brownstein participated singly, acted in concert and/or in furtherance of various fraudulent combinations with defendants Nissan and Brodsky employed a scheme to defraud plaintiffs and the class; defendant Brownstein engaged in the act of preparing a Report of defendant 3 I Co. which operated as a fraud on plaintiffs and the class; defendant Brownstein participated singly, acted in concert and/or in furtherance of various fraudulent combinations with defendants Nissan and Brodsky engaged in the act of preparing a Report on defendant 3 I Co. which operated as a fraud on plaintiffs and the class; defendant Brownstein in furtherance of the various combinations into which these aforesaid defendants had entered with intent to deceive and defraud

plaintiffs and the class prior to his preparation of his aforesaid Report on defendant 3 I Co. discussed the finances of said 3 I Co. with defendants Nissan and Brodsky and informed these defendants that he was preparing the aforesaid Report; defendant Brownstein in discussing with defendant Nissan the finances of 3 I Co. and in advising defendant Nissan of the advent of his aforesaid Report did so with the knowledge that defendant Nissan owned securities of defendant 3 I Co. and that defendant Nissan was a registerd representative employed by defendant Walston, a dealer and "market-maker" in the securities of 3 I Co.; defendant Brownstein in discussing with defendant Brodsky the finances of 3 I Co. and in advising defendant Brodsky of the advent of his aforesaid Report did so with the knowledge that defendant Brodsky was the major stockholder and chief officer and director of 3 I Co., defendant Brownstein participated singly, acted in concert and/or in furtherance of the various fraudulent combinations with defendant 3 I Co., Nissan and Brodsky prepared the aforesaid Report on defendant 3 I Co. which Report contained false and/or misleading statements of material facts and omitted to state material facts which were necessary to be made in order not to make such statements misleading to plaintiffs and the class; defendants Brownstein, Marine Midland and Dreyfus in furtherance of the various fraudulent combinations into which all these aforesaid defendants had entered did engage in a scheme and conspiracy and/or act, practice or course of business and the material misrepresentations, omissions and untruths thereof, to willfully, directly and indirectly, defraud plaintiffs and the class by affecting the value of the 3 I Co. Common Stock and by so doing caused plaintiffs and the class to purchase said 3 I Co. Common Stock without knowledge of the facts hereinbefore alleged: defen-

dant Brownstein aided and abetted the fraudulent schemes and acts, practices and course of business of defendants Nissan, Walston, 3 I Co. and Brodsky; defendant Brownstein knew that his aforesaid Report contained inflated reports, untrue material statements, incorrect statements and evaluations of defendant 3 I Co.'s present financial condition and business operations and grossly overstated, reckless and unfounded projections of defendant 3 I Co.'s future earnings and prospects so as to defraud, deceive and/or mislead plaintiffs and the class; defendant Brownstein failed to sufficiently investigate the known and filed information of defendant 3 I Co.'s finances which would lead to other information which should have been incorporated in his aforesaid Report; defendant Brownstein and Marine Midland failed to properly investigate the finances of defendant 3 I Co. before preparing, finalizing and approving the aforesaid Report so as not to defraud, deceive and/or mislead plaintiffs and the class; defendant Brownstein in his relationships with defendant Brodsky was an insider with private access to 3 I Co.; defendant Brownstein for his own profit and benefit traded in the securities of 3 I Co. while possessing, utilizing and "tipping" insider information and mailing, delivering and/or distributing copies of his aforesaid Report; defendant Marine Midland failed to exercise reasonable supervision over defendant Brownstein to prevent all of the aforesaid; defendant Marine Midland by its silence and inaction permitted and/or acquiesced for defendant Brownstein to defraud, deceive and/or mislead plaintiffs and the class; defendants Marine Midland and Dreyfus benefited by defendant Brownstein's aforesaid actions and accordingly defendant Marine Midland and

Dreyfus were insiders with private access to 3 I Co. and as insiders possessing, utilizing and "tipping" inside information and mailing, delivering and/or distributing copies of defendant Brownstein's aforesaid Report and Bulletins, defendants Marine Midland and Dreyfus for their own profit and benefit traded in the securities of 3 I Co.

194. As the result of the aforesaid actions of the aforesaid defendants, the common stock of 3 I Co. was caused to have a substantial artificial price increase, whereas said common stock was and still is worthless and at present is quoted at less than fifty ($ .50) per share.

195. As the result of the aforesaid actions of the aforesaid defendants, plaintiffs and the class were induced to purchase the Common Stock, Class A of defendant 3 I Co. without knowledge of the facts hereinbefore alleged.

196. Plaintiffs and the Class sustained substantial losses as the result of the foregoing in the amount of $15,000,000.00.

JUDGEMENT

WHEREFORE, plaintiffs and the Class demands judgement against defendants, as follows:

(a) that this action be declared as maintained as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure;

(b) that defendants be adjudged jointly and severally liable to plaintiffs and the plaintiff class for compensatory damages in the amount of $15,000,000.00 and, in addition, punitive damages.

(c) that plaintiffs be awarded costs and reasonable counsel's fees,

together with such other and further relief as to this Court shall appear just and equitable.

Robert R. Felton

ROBERT R. FELTON
Attorney for Plaintiffs
42 Third Avenue
Mineola, New York 11501
516-746-5711

(Filed November 9, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

No. 73 Civ. 2200 DBB

AFFIDAVIT IN OPPOSITIO TO MOTION TO AMEND

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MILTON KUNEN, being duly sworn, deposes and says:

1. I am a member of the firm of Kaye, Scholer, Fierman, Hays & Handler, attorneys for defendant Main Lafrentz & Co. ("Main Lafrentz"). I make this affidavit in opposition to plaintiff's motion to file a second amended complaint.

2. Having filed his first amended complaint as recently as August 14, 1973, plaintiff now seeks a further amendment to the complaint to hurl new, unsubstantiated and unsupportable charges against Main Lafrentz. In Main Lafrentz' motion for summary judgment, which is incorporated herein by reference, Main Lafrentz has refuted each of the baseless charges in plaintiff's first amended complaint. By attempting to file a second amended complaint on the heels of the filing of his first amended complaint, plaintiff's intention in this litigation is made manifest: Plaintiff will use the processes of this Court to harass Main Lafrentz by continuing to concoct new, meritless allegations for the purpose of maligning Main Lafrentz and

in an attempt to confuse the issues in this case. It is respectfully submitted that the only way to protect Main Lafrentz from further harassment and needless expense is by immediate action: granting Main Lafrentz' motion for summary judgment, and denying plaintiff's motion to further amend his complaint.

Prior Proceedings Involving Main Lafrentz

3. Main Lafrentz was not a party to the original action filed on May 17, 1973. It was not added as a party defendant until the amended complaint was filed by the plaintiff on August 14, 1973.

4. On November 2, 1973, Main Lafrentz moved for summary judgment, which motion is returnable at the same time as the return date of the instant motion. In my affidavit in support of the motion for summary judgment I set forth all of the facts concerning the two areas upon which plaintiff bases his complaint against Main Lafrentz: the acquisition by 3I Company/Information Interscience, Inc. ("3I") of a data bank license from Excerpta Medica Foundation and 3I's acquisition of Scientific Literature Corp., a wholly-owned subsidiary. I will not burden the Court here with a repetition of the facts set forth in my affidavit. Suffice it to say each aspect of these two acquisitions was fully set forth in the 3I financial statements and the notes thereto, Main Lafrentz issued a qualified opinion with respect to the data bank license, and each and every contention made by plaintiff against Main Lafrentz is totally devoid of merit.

5. Insofar as Main Lafrentz is concerned, the proposed second amendment adds only one basic allegation to plaintiff's charges: that the 30,000 shares which were to be issued to the finder in connection with 3I's acquisition of the data bank license were not issued to him prior to December 1, 1970 (proposed second amended complaint ¶ 135); that the balance sheet for the year ended June 30, 1970 incorrectly understated the current liability of 3I by $150,000 (Id. ¶ 136) and that the Main Lafrentz report failed to disclose this alleged understatement of $150,000. (Id. ¶ 148)

6. It may be recalled that in connection with 3I's acquisition of the data bank license from Excerpta Medica Foundation, that the finder, Von Eugen, was paid $150,000 in cash and received a promise from 3I to pay him an additional $150,000 within 180 days. Pursuant to a new agreement between 3I and Von Eugen dated June 15, 1970, the obligation to pay the $150,000 was cancelled, and 3I agreed to issue to Von Eugen 30,000 shares of 3I stock on December 1, 1970.

7. This agreement is in the form of a letter from 3I to Von Eugen dated June 15, 1970, and is attached to the motion for summary judgment and, for the Court's convenience, is attached hereto again as Exhibit A. It states in relevant part:

> "This will confirm our understanding that the second installment of $150,000, which was to have been paid to you on or about April 27, 1970, pursuant to the Letter Agreement, is not due and payable to you, it being our agreement that in lieu of such payment you shall have the rights set forth below" (emphasis added).

The rights "set forth below" included the right to obtain 30,000 shares of 3I stock on December 1, 1970, which stock 3I was obligated to repurchase at $5.00 per share.

8. Plaintiff's second amended complaint seeks to allege that Von Eugen was not issued those 30,000 shares prior to December 1, 1970 and, presumably, therefore, the balance sheet as of June 30, 1970 understated 3I's obligation by $150,000. However, this is a complete misunderstanding of the most basic accounting rules, which plaintiff must well know because he is a certified public accountant.

9. The balance sheet was dated June 30, 1970. Therefore, it was a statement of the financial condition of the company as of that date. As of June 30, 1970, there was no obligation to pay Von Eugen $150,000: this obligation had been cancelled by the agreement dated June 15, 1970, which stated explicitly that the $150,000 "is not due and payable to you [Von Eugen]." It would have been grossly improper for 3I to have listed this $150,000 as a "payable" obligation on June 30, 1970 when there was no such obligation on that date.

10. Plaintiff as much as admitted this basic accounting tenet at his deposition. There, he stated that paragraph 124 of the amended complaint, which referred to the same alleged $150,000 liability, did not refer to the balance sheet upon which Main Lafrentz had issued its qualified opinion:

> "Q. But you in Paragraph 124 of your [first amended] complaint, said: 'Upon the signing of the aforesaid letter agreement with defendant Von Eugen, defendant 3I Co. never reflected on its balance sheet as a current liability thereunder of $150,000.'

"Now, the balance sheet you were talking about, I take it, was the balance sheet Main Lafrentz certified with the qualified certification which covered the fiscal year ending June 30, [1970]; right?

A. No. No. Certainly not.

Q. Which balance sheet were you referring to?

A. I am talking about the internal balance sheet of the company. . . ."

(Tr. 464)

Thus, plaintiff himself recognized, as indeed he must have, that the 3I balance sheet as of June 30, 1970 could not reflect the obligation to pay Von Eugen $150,000 because that obligation had already been cancelled by the agreement dated June 15, 1970.

11. Despite this recognition, plaintiff now seeks to further amend his complaint to charge that the balance sheet did not state this $150,000 obligation. Such a contention must be rejected out of hand. The obligation had been cancelled, and, consequently, plaintiff's allegation in his proposed second amended complaint that the balance sheet understated 3I's liabilities by $150,000 is frivolous.

12. Plaintiff also requests that the Court allow him to further amend his complaint to charge that the 30,000 shares were not issued to Von Eugen prior to December 1, 1970 (proposed second amended complaint ¶ 135) and that the balance sheet for the fiscal year ended June 30, 1970 incorrectly stated that the stock issued for the data bank license amounted to $850,000 (including the 30,000 shares at $5.00 per share to be issued to Von Eugen) (Id., ¶ 137). The fact is that the 30,000 shares were issued

to Von Eugen on November 30, 1970, which fully met 3I's obligation to issue those shares on December 1. (Ex. A) The balance sheet as of June 30, 1970 took into account 3I's obligation to issue those shares on December 1, 1970 and fully disclosed that obligation. That balance sheet, which was attached to the motion for summary judgment, and is attached hereto as Exhibit B for the Court's convenience, stated in footnote 1 that the consideration for the acquisition of the data bank license from Excerpta Medica Foundation included:

> "30,000 shares of Class A common stock to be issued on December 1, 1970 which the Company can be required to purchase at $5.00 per share in July, 1971. The shares to be issued on December 1, 1970 have been reflected as outstanding in the accompanying financial statements" (emphasis added).

Thus, plaintiff's proposed allegation that the balance sheet "incorrectly" stated that the stock issued in connection with this transaction included the 30,000 shares to be issued to Von Eugen is patently frivolous: The financial statements clearly revealed that the stock was "to be issued on December 1, 1970" but was reflected as "outstanding" on June 30, 1970.

13. Consequently, the 3I financial statements as of June 30, 1970 fully set forth the obligation to Von Eugen as of that date, i.e., the obligation to issue 30,000 shares on December 1, 1970 (but no obligation to pay him $150,000 in cash). And the financial statements accounted for the liability to issue those 30,000 shares by reflecting those shares as outstanding in the financial statements, and revealing these facts fully in the notes to the financial statements.

14. There is an implication in plaintiff's new charges that the 30,000 shares were never issued to Von Eugen. First, this is totally irrelevant to any claim against Main Lafrentz. The balance sheet states the condition of 3I on June 30, 1970, and the 30,000 shares were not to be issued until December 1, 1970. The note to the financial statement does not represent that those 30,000 shares had been issued by the date of the balance sheet but, rather, that they were "to be issued" on December 1, 1970. As stated above, the obligation to issue these shares was fully accounted for on the June 30, 1970 balance sheet, and, as stated in the accompanying motion for summary judgment, Lybrand Ross Bros. & Montgomery ("Lybrand") succeeded Main Lafrentz as accountants for 3I in the succeeding year, which year included the December 1, 1970 date.

15. Second, the 30,000 shares were actually issued to Von Eugen on November 30, 1970, as stated in the attached affidavit of Bruce Hecker. Thus, the balance sheet as of June 30, 1970 fully set forth 3I's obligations to Von Eugen, and 3I met those obligations in full.

Conclusion

16. In sum, plaintiff's proposed new allegations against Main Lafrentz are even more frivolous than the allegations in the amended complaint. This continued harassment of Main Lafrentz, and the consistent maligning of Main Lafrentz by the making of meritless charges, must be put to an immediate end by the granting of Main Lafrentz' motion for summary judgment and the denial of plaintiff's motion to further amend his complaint.

Milton Kunen

Sworn to before me, this
7th day of November, 1973.

Notary Public

[illegible] York
[illegible] County
Commission Expires [illegible], 1975

AFFIDAVIT OF BRUCE A. HECKER ANNEXED TO MILTON KUNEN'S AFFIDAVIT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

AFFIDAVIT

73 Civ. 2200 DBB

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

BRUCE A. HECKER, being duly sworn, deposes and says:

I am a member of the Bar of this Court and of the firm of Shea Gould Climenko & Kramer, attorneys for the so-called Excerpta Medica group of defendants. I make this affidavit at the request of Milton Kunen, a member of the firm of Kaye, Scholer Fierman, Hays & Handler, attorneys for defendant Main Lafrentz & Co.

I advise this Court that on or about November 30, 1970 I received certificates representing 30,000 shares of Common Stock, Class A, of 3i Co./Information Interscience Incorporated. The certificates were issued to Fred Von Eugen and were transmitted to me with a letter dated November 30, 1970 from Wolf, Block, Schorr and Solis-Cohen, attorneys for 3i Company.

Bruce A. Hecker

Sworn to before me this
7th day of November, 1973.

Elsie L. Selig

ELSIE L. SELIG
Notary Public, State of New York
No. 31-3580950
New York County
Commission Expires 1975

3i Company | Information Interscience Incorporated
2201 Walnut Street, Philadelphia, Pennsylvania 19103 (215) 299 9717

356a

June 15, 1970

Mr. Fred Von Eugen
Casa Olanda
Via Casa del Frate
Losone, Tessin, Switzerland

Dear Mr. Von Eugen:

Reference is made to the Letter Agreement between us dated September 19, 1969 (hereinafter referred to as the "Letter Agreement").

This will confirm our understanding that the second installment of $150,000, which was to have been paid to you on or about April 27, 1970, pursuant to the Letter Agreement, is not due and payable to you, it being our agreement that in lieu of such payment you shall have the rights set forth below.

On December 1, 1970, 3i shall issue to you certificates (in such denominations as you shall designate) for 30,000 shares of the Common Stock, Class A, of 3i, which shares shall be taken by you for investment purposes, without a view to resale, with the certificates being appropriately legended to that effect.

You shall have the right, which may be exercised at any time from July 1, 1971 until June 30, 1972, to require 3i to do either of the following:

1. Repurchase the 30,000 shares of stock for a price of $150,000, which price shall be payable thirty days from the date of your written request.

2. At 3i's sole cost and expense, diligently prepare, file and use its best efforts to effect a registration statement under the Securities Act of 1933 covering the 30,000 shares. In the event that you shall so request, said registration statement shall be filed within sixty days of your request, subject to the right of 3i to defer such filing until such filing may be made based solely upon financial statements for a full fiscal year of 3i. Notwithstanding the foregoing, in the event that you

shall request such registration statement, 3i shall not be obligated to proceed with it if (i) 3i has filed a registration statement which became effective after the date on which you received the 30,000 shares, in which registration statement you were offered the opportunity to include said shares, or if (ii) Messrs. Wolf, Block, Schorr and Solis-Cohen, counsel for 3i, shall be of the opinion that said shares can then be freely sold by you in regular brokerage transactions without registration, or if (iii) 3i offers to purchase and pay for said shares within thirty days of your registration request at a price equal to the market value of said shares on the date of such request.

Please confirm that this letter accurately sets forth the terms of our agreement amending the Letter Agreement, by signing and returning the enclosed copy of this letter.

3i Company - Information Interscience Incorporated

By _____
Gerald L. Brodsky, President

ACKNOWLEDGED AND AGREED TO:

_____
Fred Von Eugen

Assets

Current assets	June 30, 1970	June 30, 1969*
Cash	$ 36,742	$ 36,569
Marketable securities, at cost and accrued interest	—	548,618
Accounts receivable	330,286	467,915
Other current assets	13,428	31,885
Total current assets	380,456	1,084,987
Investments in affiliated companies, at cost, (note 2)	112,500	92,500
Fixed assets, at cost, less accumulated depreciation of $50,947 and $31,931 (note 4)	101,302	69,979
Data bank licenses, at cost (note 1)	1,028,606	—
Data bank and systems development cost, at nominal value	1	1
Other assets	24,354	62,130
Total assets	$1,647,219	$1,309,597

Liabilities and Shareholders' Equity

Current liabilities		
Accounts payable	$ 200,084	$ 105,814
Accrued expenses	89,285	144,394
Total current liabilities	289,369	250,208
Shareholders' equity (notes 1 and 6)		
Common stock, Class A, par value $.10; authorized 3,000,000 shares, outstanding 1,517,770 and 1,372,175 shares	151,777	137,218
Common stock, Class B, par value $.10; authorized 300,000 shares, outstanding 132,475 and 154,480 shares	13,248	15,448
Capital in excess of par value	2,649,274	1,807,595
Accumulated deficit	(1,456,449) ✓	(900,872)
Total shareholders' equity	1,357,850	1,059,389
Total liabilities and shareholders' equity	$1,647,219	$1,309,597

*Restated

The accompanying notes are an integral part of the financial statements.

3i Company/Information Interscience Incorporated
Consolidated Statement of Operations

	For year ended June 30, 1970	1969*
Net revenue (note 1)	$1,402,760	$1,256,936
Costs and expenses		
Operating expenses	1,259,821	1,203,130
Selling and administrative expenses	549,348	440,666
	1,809,169	1,643,796
Operating loss on continuing operations	406,409	386,860
Operating loss of discontinued operation (note 1)	149,168	14,456
Net loss before extraordinary item	555,577	401,316
Expenses of non-consummated merger	—	291,144
Net loss	$ 555,577	$ 692,460
Loss per share based on weighted average shares outstanding		
Loss from continuing operations	$.25	$.26
Loss from discontinued operation	.09	.01
Extraordinary item	—	.20
Net loss	$.34	$.47

*Restated

The accompanying notes are an integral part of the financial statements.

Accountants' Report to the Board of Directors
3i Company/Information Interscience Incorporated

We have examined the consolidated balance sheet of 3i Company/Information Interscience Incorporated and subsidiaries as of June 30, 1970 and the related consolidated statement of operations for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, subject to the realization of carrying value of data bank licenses and investments in affiliated companies as discussed in notes 1 and 2 of Notes to Consolidated Financial Statements, such financial statements present fairly the financial position of 3i Company/Information Interscience Incorporated and subsidiaries at June 30, 1970, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Main Lafrentz & Co.

Philadelphia, Pennsylvania
November 20, 1970

3i Company/Information Interscience Incorporated
Notes to Consolidated Financial Statements

1. Principles of Consolidation, Accounting Matters, and Subsequent Events

The consolidated financial statements include the accounts of the Company and its subsidiaries. During the fiscal year, the Company discontinued the operation of its wholly-owned subsidiary, Systan, Inc., which it is currently in the process of selling. This acquisition, in July, 1969, was originally accounted for as a pooling of interests in the financial statements for the fiscal year ended June 30, 1969, which have been restated in the accompanying financial statements to reflect the discontinuation of Systan's operations. The Company's investment in Systan, net of operating losses, is included in other assets in the amount of $3,555.

Net revenues for 1969, as reflected in the Consolidated Statement of Operations, have been reduced by $114,356 accompanied by a like reduction in expenses relating to a contract settlement in such year.

On November 2, 1970, the Company amended the agreement whereby it acquired Scientific Literature Corporation (SLC), a wholly-owned subsidiary. The amending agreement released the Company from certain restrictions in regard to the operations of SLC and requires the Company to issue to the former shareholders 44,800 shares of Class A common stock which have been or could have been earned contingent upon earnings of SLC. These shares are reflected as outstanding in the accompanying financial statements. In the opinion of the Company, SLC will achieve the necessary earnings which would have entitled the sellers to receive these shares under the original agreement.

In September, 1969, the Company entered into an agreement, subsequently amended in June, 1970, with Excerpta Medica Foundation, a foreign non-profit corporation, for the exclusive right within the United States to market information services from Excerpta's data bank of biomedical information. The consideration for this right is $1,000,000, including 46,166 shares of Class A common stock issued in October, 1969, which the Company can be required to purchase at $15.00 per share in October, 1971, and 30,000 shares of Class A common stock to be issued on December 1, 1970 which the Company can be required to purchase at $5.00 per share in July, 1971. The shares to be issued on December 1, 1970 have been reflected as outstanding in the accompanying financial statements. At its option, the Company can extend this agreement starting July 1, 1971 and thereafter until 1974 by the payment of additional considerations. An amendment to this agreement affecting the extension of certain dates and changes in additional consideration is currently being negotiated.

During the second half of the fiscal year ended June 30, 1970, the Company commenced marketing its services in connection with the data bank licenses acquired during the year, and had not realized any significant amount of revenues from these services. Accordingly, the Company has not begun to amortize the acquisition costs of these rights and has deferred the determination of its policy in regard to the amortization.

In November, 1970, the Company borrowed $225,000 from a bank, repayable in August, 1971, at interest of 1% above the prime rate. The President of the Company, his brother, and certain other individuals have guaranteed repayment of the note. In consideration for this guarantee, the guarantors, with the exception of the President, will be issued warrants to purchase, during the next three years, in the aggregate of 45,000 shares of the Company's Class A common stock at $3.50 per share for the first nine months and $4.50 per share thereafter. In addition, the bank will be issued warrants to purchase 5,000 shares of the Company's Class A common stock under the same terms.

2. Transactions with Affiliates

The Company carries its investments in two affiliated companies at cost. Both affiliated companies are in the initial year of marketing their principal services and neither has reached a level of profitable operations. These affiliates follow conservative accounting policies of not deferring development expenditures, but instead charge them to income as incurred. Accordingly, the Company's investment of $112,500, substantially exceeds the underlying equity value. In the opinion of management the cost of these investments fairly states the value of these long-term investments. Officers of the Company also hold interests in these companies. During the year ended June 30, 1970, revenue for materials delivered and services rendered to these affiliates by the Company totalled $22,032, and costs and expenses totalled $32,452 for materials received and services rendered to the Company by these affiliates.

3. Contingencies

The Company has commenced an action to collect an advance (which has been fully reserved) made by the Company pursuant to a proposed acquisition which was discontinued in 1969. A counterclaim in the amount of $100,000 has been filed in this action. In the opinion of counsel to the Company, the claim is bona fide and the counterclaim is without merit.

A claim, in the amount of $231,707, has been made against the Company by a former employee alleging a breach of an employment agreement. The Company has filed an answer and counterclaim in this action, commenced in 1967, denying any liability. Based on the information furnished by the Company, counsel to the Company believes there is a meritorious defense to this claim.

4. Fixed Assets

Fixed assets, stated at cost and depreciated over estimated useful lives using straight line and declining balance methods, are comprised as follows:

	Cost	Depreciation to June 30, 1970	Estimated useful life in years
Office furniture and equipment	$ 79,045	$27,988	2 to 10 years
Leasehold improvements	73,204	22,959	4 to 11 years
	$152,249	$50,947	

Leasehold improvements are being amortized over the life of the lease and options for renewal. The Company's lease on its principal offices expires in February, 1971, but is renewable, at the option of the Company, for three year periods in 1972, 1975 and 1978 at aggregate annual rentals of $60,000, $66,000 and $72,000, respectively.

Improvements and betterments are charged to fixed assets, and expenditures for maintenance, repairs and minor renewals are charged to operations. At the time assets are retired or sold, the cost and accumulated depreciation are removed from the accounts and the resulting gain or loss, if any, is reflected in operations.

5. Tax Loss Carry-Forwards

Unused tax loss carry-forwards of $1,470,000 are available to offset future taxable income and expire as follows:

June 30, 1973	$ 240,000
June 30, 1974	280,000
June 30, 1975	950,000
	$1,470,000

6. Shareholders' Equity

Under the Company's qualified stock option plan up to 600,000 shares of Class A common stock can be granted to officers and key employees at not less than 100% of the fair market value of the Company's stock at date of grant. During the year ended June 30, 1970, options for 29,000 shares were granted and options for 70,400 shares were cancelled due to termination of employment, etc. Options for 2,125 shares were exercised during the year and, at June 30, 1970, options for 61,900 shares were outstanding at prices ranging from $1.67 to $22.75 per share, of which options for 20,599 shares were exercisable. Options are exercisable in four and five cumulative equal annual installments.

At June 30, 1970, warrants were outstanding to purchase 30,000 shares of the Company's Class A common stock, at prices ranging from $2.17 to $2.75 per share to March 1, 1973, the expiration date of the warrants.

The Company has reserved 132,475 shares of Class A stock for future conversion privileges of Class B stock. Class B stock has six votes per share, and Class A stock has one vote for each share held.

Changes in shareholders' equity is summarized as follows:

	Common stock Class A	Common stock Class B	Capital in excess of par value	Accumulated deficit
Balance at June 30, 1969	$137,218	$15,448	$1,807,595	$ (300,872)
Conversion of Class B stock	2,200	(2,200)		
Options exercised	212		3,826	
Stock issued in connection with amendment to Scientific Literature Corporation acquisition agreement (note 1)	4,480		(4,480)	
Stock issued in connection with agreement with Excerpta Medica Foundation (note 1)	7,667		842,333	
Net loss for year ended June 30, 1970				(555,577)
Balance at June 30, 1970	$151,777	$13,248	$2,649,274	$(1,[illegible])

AFFIDAVIT OF R. W. FOSS IN OPPOSITION TO PLAINTIFF'S MOTION RE: AMENDED COMPLAINT (Filed November 7, 1973)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

ROBERT R. FELTON, :

Plaintiff, : No. 73 Civ. 2200-DBB

-against- :

WALSTON & CO., INC., et al. : AFFIDAVIT

Defendants. :

- -x

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

RICHARD W. FOSS, being duly sworn, deposes and says:

1. 1. I am a Senior Vice President of Marine Midland Banks, Inc. ("the Corporation"), one of the defendants plaintiff seeks to add as a party in this case. I am fully familiar with the facts stated herein, and I make this affidavit from my own knowledge, in opposition to plaintiff's motion for leave to serve a "proposed [second] amended complaint" in this action.

2. In the guise of a "proposed amended complaint," plaintiff seeks to add eleven new parties -- the Corporation, and nine banks, each located in a different part of New York State, which the Corporation controls, and an investment management company, one-half controlled by the Corporation. Plaintiff has not made any motion to add parties, as required by Rule 21.

3. Defendant has no objection to substituting

Marine Midland Banks, Inc., the employer of the author of the report which plaintiff attacks, for Marine Midland Bank-New York, the bank which plaintiff wrongly believed and alleged in his first two complaints to be the employer. But plaintiff should not be allowed to join in this case every bank controlled by Marine Midland Bank, Inc. from New York City to Buffalo, against which it has no claim whatsoever. In an effort to hide his inability to allege anything against these banks, he improperly combines all in one catch-all name, "Marine Midland."

Marine Midland Banks, Inc.

4. The Corporation is a multi-bank holding company registered under the Bank Holding Company Act of 1956, as amended. It controls ten banks or trust companies (the "Constituent Banks"), which are engaged in the general commercial banking business throughout the State of New York. As of December 31, 1972 the Corporation held the following percent of the total outstanding shares of common stock of the Constituent Banks:

Marine Midland Bank-New York	99.97%
Marine Midland Bank-Western	99.83%
Marine Midland Bank-Central	99.94%
Marine Midland Bank-Rochester	99.88%
Marine Midland Bank-Southern	94.03%
Marine Midland Bank-Northern	97.80%
Marine Midland Bank of Southeastern New York, N.A.	98.72%
Marine Midland Bank-Eastern, National Association	99.12%
Marine Midland Tinker National Bank	99.36%
Marine Midland Bank-Chautauqua, National Association	97.61%

5. The Corporation also owns 50% of the outstanding common stock of Dreyfus-Marine Midland, Inc. ("Dreyfus-Marine"), an investment management company offering services to large institutional clients and pension funds. The other 50% of the outstanding common stock of Dreyfus-Marine is owned by The Dreyfus Corporation, manager of The Dreyfus Fund, Inc.

6. The information contained in paragraphs 4 and 5 of this affidavit is public knowledge, although plaintiff claims not to have known it; it is filed with the Securities and Exchange Commission ("SEC"), the Federal Reserve Board, and various New York State Regulatory Agencies.

Plaintiff's Claim

7. Marine Midland Bank-New York and Joel Brownstein, an employee of the Corporation, are named as defendants in the first amended complaint in this action. Plaintiff alleges that defendant Brownstein prepared a report on defendant 3i Company/Information Interscience Inc. ("3i") which "contained false and/or misleading statements and omitted to state material facts which were necessary to be made in order not to make such statements misleading" (amended complaint ¶ 177), and that defendant Brownstein "participated singly, acted in concert and/or in furtherance of common fraudulent combinations [with other defendants] to defraud plaintiff" (ibid.).

8. The sole allegations against defendant Marine Midland Bank-New York in the amended complaint are (i) "defendant Marine Midland failed to exercise reasonable supervision over defendant Brownstein to prevent [defendant

Brownstein's alleged unlawful conduct]" and (ii) "defendant Marine Midland by its silence and inaction permitted defendant Brownstein to defraud, deceive and/or mislead plaintiff" (ibid.).

9. Significantly, plaintiff conceded on his deposition that he purchased his own 3i stock on the advice of his broker, that nearly all of his purchases were made before the report was even written and he had never even read carefully the report he now attacks.

The Proposed Amendment

10. Plaintiff took the deposition of defendant Brownstein on October 15 and 16, 1973 and learned that Brownstein was never an employee of Marine Midland Bank-New York but was only an employee of the Corporation. By notice of motion, dated October 29, 1973, plaintiff seeks leave to serve the "proposed amended complaint" annexed to his motion papers "on grounds that plaintiff has just learned of the existence of the additional facts stated therein and that justice so requires in order that all issues between the parties be fully litigated in this action." In his affidavit in support of the motion for leave to amend, plaintiff states (p. 2) "only during Brownstein's deposition was I informed which Bank employed Brownstein." But without any explanation plaintiff goes on to state "The proposed amended complaint includes as defendants all subsidiaries as well as Marine Midland Banks, Inc., Brownstein's employer."

11. In view of the allegations of the amended

complaint, neither Marine Midland Bank-New York nor Marine Midland Banks, Inc. has any objection to substitution of the latter for the former as a defendant under the allegations of the amended complaint. Such a substitution merely corrects plaintiff's misunderstanding on Brownstein's employer.

12. However, in the "proposed amended complaint" plaintiff names as defendants all ten of the Constituent Banks and Dreyfus-Marine on the asserted additional ground:

> . . .Brownstein, [the Corporation, the Constituent Banks] and Dreyfus [-Marine] in furtherance of the various fraudulent combinations into which all these [other] defendants had entered did engage in a scheme and conspiracy and/or act, practice or course of business and the material misrepresentations, omissions and untruths thereof, to willfully, directly or indirectly, defraud plaintiff and the class by affecting the value of 3 I Co. Common Stock and by so doing caused plaintiff and the class to purchase said 3 I Common Stock without knowledge of the facts hereinbefore alleged (proposed amended complaint, ¶ 193)

Plaintiff also claims that the Corporation, the Constituent Banks and Dreyfus-Marine "for their own profit and benefit traded in the securities of 3 I Co." (ibid.)

13. Plaintiff claims to have learned of the foregoing from the deposition testimony of defendant Brownstein. Brownstein did indeed identify several of the banks within the Marine Midland system (tr., pp. 5-7) and testified that as part of his duties as a security analyst employed by the Corporation, he prepared a report on 3i in May, 1971 (id., pp. 42-43). However, when questioned about purchases of 3i Common Stock by any of the Constituent Banks, Brownstein denied knowledge of the types of accounts managed by the Constituent Banks, any "system" for managing such

accounts, or who made any decision to purchase a security (id., pp. 79-83). Although he wrote a report on 3i, Mr. Brownstein could not and did not recommend 3i stock -- or any other security -- for purchase by any of the Constituent Banks. That decision rests with the Investment Policy Committee of the Corporation, as Brownstein testified (id., pp. 48, 73).

14. The amended complaint, the "proposed amended complaint," and even plaintiff's affidavit in support of his motion to amend are submitted "on information and belief." Despite some detailed allegations concerning Brownstein's May 17, 1971 report in the amended complaint, plaintiff stated that he never read the report prior to any purchase of 3i stock (tr., p. 242), that he spent "under ten minutes" looking at it when he was first shown it (id., pp. 203-204), and that he did not have the report when he prepared the complaint or amended complaint (id., p. 260). Other allegations concerning Brownstein and Marine Midland were concededly based upon "opinion" and conjecture. (see, e.g., id., pp. 244-247)

15. As pointed out in greater detail in the memorandum submitted in opposition to the present motion, plaintiff clearly seeks to amend the complaint based upon his tortured and inaccurate inferences from Brownstein's testimony, consistent with his prior practice of basing the amended complaint (as to Brownstein and Marine Midland) entirely on his personal opinion and conjecture. Presumably, following each deposition taken by plaintiff, defendants may expect new allegations, not to mention new defendants,

similarly based upon such conjecture. Justice hardly requires that this Court permit plaintiff further to harass defendants with continued amendments to the complaint, adding new and additional allegations as groundless as those asserted in the complaint and amended complaint.

16. For the foregoing reasons, I respectfully submit that plaintiff's motion to amend the amended complaint should be denied, except for the substitution of Marine Midland Banks, Inc. for Marine Midland Bank-New York as defendant (see ¶ 3, supra).

(Richard W. Foss)

Sworn to before me this
7th day of November, 1973.

Notary Public

THERESE GIRARD
Notary Public, State of New York

EXHIBIT ANNEXED TO MARINEMIDLAND'S MEMO IN OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS ACTION (SCHEDULE OF PLAINTIFF'S TRANSACTIONS IN 3 I STOCK

PLAINTIFF'S TRANSACTIONS IN 3i STOCK

Date	Trans-action	No. of Shares	Price Share ($)	Total paid or received ($)
July 9, 1970	Bought	2,000	4 3/4-4 5/8	9,437.50
Jan. 13,1971	Bought	1,000	7 3/4	7,750.00
Feb. 1, 1971	Sold	1,000	9 1/2	9,500.00
Feb. 9, 1971	Sold	2,000	12 1/2	24,250.00
Mar. 2, 1971	Bought	3,000	11 3/4-12	35,562.50
Mar. 16,1971	Sold	2,000	15 1/8	30,250.00
Mar. 22,1971	Bought	2,000	14 7/8	29,750.00
Apr. 13,1971	Sold	1,000	15 1/4	15,250.00
June 7, 1971	Bought	1,000	20	20,000.00
June 21,1971	Sold	300	19 3/8	5,812.50
Dec. 27,1971	Sold	700	7 5/8	5,337.50

(All transactions made through Walston & Co., Inc.)

SOURCE: Defendants' Exhibits 3-7 for identification, deposition of Robert R. Felton

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Filed November 9, 1973)

----------x

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

----------x

STATE OF NEW YORK)
ss.:
COUNTY OF NASSAU)

ROBERT R. FELTON, being duly sworn, upon information and belief, deposes and says:

I submit this affidavit in reply to defendant Main Lafrentz' opposition to plaintiff's motion to amend the complaint herein.

I am not surprised at the viciousness of Mr. Kunen's attack in view of his spurious motion for a summary judgement which he made returnable on the same date as this instant motion. The fact that Mr. Kunen would not adjourn the deposition of certain employees and the partner who conducted the audit of 3 I Co. for Main Lafrentz nor would he adjourn his motion for summary judgement until after the completion of these depositions shows Mr. Kunen to be "running scared." I respectfully wish to assure this Court that the allegations in the proposed amended Complaint were not frivolous, nor were they made with any intent to harass Main

Lafrentz nor were they made in an attempt to confuse the issues in this case.

Nowhere in the Main Lafrentz Certificate (Report) and the accompanying Notes to the Consolidated Statements is there any reference to the letter agreements between 3 I Co. and Fred Von Eugen. Mr. Kunen has submitted Exhibits in support of his motion for summary judgment which include defendant's (Exhibit 1) the two agreements between 3 I Co. and the Excerpta Medica subsidiaries and the Excerpta Medica Foundation dated September 19, 1969; defendant's (Exhibit 2) letter agreement dated September 19, 1969 between 3 I Co. and Fred Von Eugen; defendant's (Exhibit 3) letter agreement dated June 15, 1970 between 3 I Co. and Fred Von Eugen and defendant's (Exhibit 4) letter agreement dated April 5, 1972 between 3 I Co. and Fred Von Eugen.

Mr. Kunen, after reading the letter agreement (Exhibit 2), naively states in his opposition affidavit paragraph 6, "that the finder, Von Eugen, was paid $150,000 in cash and <u>received a promise</u> from 3 I Co. to pay him an additional $150,000 within 180 days." There was <u>no promise</u> in this letter agreement. Indeed there was an agreement between these parties that $300,000 was to be paid to Von Eugen, one-half on the closing of the contract and one-half payable to Von Eugen 180 days, thereafter; on or about April 27, 1970, Mr. Kunen would have us believe that the agreement of September 19, 1969 was a mere promise, which would suit Main Lafrentz' purposes, since in fact the $150,000 was never paid to

Von Eugen on or about April 27, 1970.

Main Lafrentz obscured the identity of Von Eugen as well as the existence of these aforesaid letter agreements although they valued the Von Eugen share of the data bank license transactions at $300,000, i.e. 30% of the total of $1,000,000, "so-called purchase at cost." A reading of the Main Lafrentz Note is very much in point:

> "In September, 1969, the Company entered into an agreement, subsequently amended in June, 1970, with Excerpta Medica Foundation . . ."

I challenge Mr. Kunen and/or Main Lafrentz to show this Court any amended agreement between 3 I Co. and Excerpta Medica Foundation, in June 1970, for I believe there was none.

The only agreement "dated June, 1970" was between 3 I Co. and Von Eugen. It was incumbent on Main Lafrentz to disclose Von Eugen's identity in their Notes in view of the $300,000 valuation in the data bank license transaction, but Main Lafrentz chose not to disclose and in the aforesaid statement in Note 1 they accordingly misrepresented the aforesaid facts.

Mr. Kunen, in paragraph (12) of his opposition affidavit, saw fit and for very good reason to underline:

> "30,000 shares of Class A common stock to be issued on December 1, 1970. . ."

Would that Main Lafrentz had also underlined these aforesaid words originally in their Note 1. However this would not serve

the purpose of 3 I Co., 3 I Co. Management and Main Lafrentz.

Main Lafrentz Note 6 contains the major misstatements as to the stock issued by 3 I Co. for fiscal year ended June 30, 1970:

"Changes in shareholders' equity is summarized as follows:

	Common Stock Class A	Capital in excess of par value
Stock issued in connection with amendment to Scientific Literature Corporation acquisition agreement (note 1)	$4,480	(4,480)
Stock issued in connection with agreement with Excerpta Medica Foundation (note 1)	7,667	842,333

I challenge Mr. Kunen and/or Main Lafrentz to show this Court that "stock issued in connection with agreement with Excerpta Medica Foundation" totalled $850,000 up to June 30, 1970. How could Main Lafrentz state in Note 6 that stock totalling $850,000 was issued prior to June 30, 1970 when in fact the aforesaid letter agreement dated "June 15, 1970" provided for $150,000 of this total to be first issued to Von Eugen on December 1, 1970.

To this point I have used quotation marks when I refer to the date of the amendatory letter agreement, defendant's (Exhibit 2) "dated June 15, 1970." I believe that this agreement was back-dated by the parties thereto so as to be applicable prior to June 30, 1970. Despite Mr. Kunen's assertion that the remaining $150,000 was "promised" to Von Eugen, the fact is that he was entitled to be paid $150,000 on or about April 27, 1970. Mr. Kunen

agrees that Von Eugen was not paid the monies on or about April 27, 1970 nor was he paid on June 15, 1970. The letter agreement "dated June 15, 1970" provided for issuance of 30,000 shares of legended stock on December 1, 1970 in lieu of the $150,000 payment. There was no explanation in this letter agreement why although "signed" in June, 1970, the stock to be issued thereunder was delayed more than 135 days thereafter, unless of course that the agreement was actually executed in November, 1970.

Main Lafrentz was late in its audit of 3 I Co. for fiscal year ended June 30, 1970 and in fact 3 I Co. requested an extension of time from the SEC to file its annual 10 K. One of the reasons given the SEC by 3 I Co. was that 3 I Co. was amending its Excerpta Medica agreement. With all of this information at its disposal, there was presumptive evidence to Main Lafrentz that this aforesaid letter agreement was back-dated by the parties to enhance the balance sheet of 3 I Co. for its fiscal year ended June 30, 1970.

There is an old adage the "the truth hurts" and this may account for the vehemence of Mr. Kunen's personal attack.

Aside from the aforesaid material misrepresentations, the omissions and non-disclosures by Main Lafrentz in its Certificate (Report) and accompanying Notes, the facts are very obvious that the balance sheet of 3 I Co. for fiscal year ended June 30, 1970 is materially incorrect. Mr. Kunen summed up his understanding of the data bank license acquisition in paragraph (20) of his moving affidavit in the spurious summary judgement motion:

Cash	$150,000
46,666 shares issued in 1969 (valued at the repurchase price of $15 per share)	700,000
30,000 shares to be issued in December 1970 (valued at the repurchase price of $5 per share)	150,000
	$1,000,000

In considering the basic axiom that "the whole is equal to the sum of its parts" we find 3 I Co. and the acquiescing Main Lafrentz stating the total $1,000,000 as a balance sheet asset on June 30, 1970. On the other side of the balance sheet, we find the payment of $150,000 in cash to Von Eugen and the issuance of 46,666 shares of lettered, restricted stock stated at $700,000. The balance of $150,000 as aforesaid was not paid to Von Eugen or or about April 27, 1970. Furthermore no shares were issued to Von Eugen prior to June 30, 1970. Therefore fairness and correctness would require that there be shown on the balance sheet of 3 I Co. as a liability to Von Eugen either monies owing of $150,000 or shares owing of $150,000. However 3 I Co. and the acquiescing Main Lafrentz did not choose to show this liability to Von Eugen in either cash or stock but instead chose to misrepresent the stock issued under aforesaid Note 6.

Mr. Kunen is never more incorrect than in his statements in paragraph (15) of his opposition affidavit, wherein he inconsistently states:

> "Second, the 30,000 shares were actually issued to Von Eugen on November 30, 1970, as stated in the attached affidavit of Bruce Hecker. Thus, the balance sheet as of June 30, 1970 fully set forth 3I's obligations to Von Eugen, and 3I met those obligations in full."

I respectfully submit that the balance sheet of 3 I Co. as of June 30, 1970 does not fully set forth 3 I Co.'s obligations in full. On the contrary, the 3 I Co. balance sheet as of June 30, 1970 understates current liabilities by the material amount of $150,000 and Main Lafrentz did not disclose this material fact either in its Certificate (Report) or in its accompanying Notes.

WHEREFORE, I request that this Court grant this motion amending the Complaint herein.

Robert R. Felton

ROBERT R. FELTON

Sworn to before me
this 8th day of November, 1973.

Leona D. MacFarlane

LEONA D. MacFARLANE
Notary Public, State of New York
No. [illegible]2650
Qualified in Nassau County
Term Expires March 30, 1975

ADDITIONAL AFFIDAVIT OF ROBERT R. FELTON DIRECTED TO MAIN LAFRENTZ'S MOTION FOR SUMMARY JUDGMENT (Filed November 9, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

-against-

73 Civ. 2200 DBB

WALSTON AND CO., INC., et al.,

Defendants.

STATE OF NEW YORK)
ss.:
COUNTY OF NASSAU)

ROBERT R. FELTON, being duly sworn, upon information and belief, deposes and says:

I submit this affidavit in addendum to my opposition to defendant Main Lafrentz' spurious motion for summary judgment.

I wish to inform this Court that Mr. Kunen has just instituted a motion for a protective order to stay all discovery against Main Lafrentz pending determination of its motion for summary judgment "on the ground that said protective order is necessary to prevent undue harassment, burden and expense to defendant Main Lafrentz..."

I respectfully suggest that Mr. Kunen's self-serving motion for this unnecessary protective order is consonant with the viciousness of Mr. Kunen's attack herein and clearly proves him to be "running scared" as I have previously suggested. There are obviously important facts and evidence that Mr. Kunen would

prefer not discovered herein, and so by bluster and vituperation he presses his attack.

There was no need for this protective order. After Mr. Kunen refused to adjourn his motion to a date two (2) weeks after the completion of the depositions that I had sought herein, I did not quarrel with his rebuff. I have not asked this Court for an adjournment of this motion nor do I intend to seek an adjournment on the return date thereof.

Furthermore I have not availed myself of Rule 56(f) of the Federal Rules of Civil Procedure, since (1) my aforesaid opposition affidavit and (2) my aforesaid reply affidavit contain specific facts that detail genuine issues for trial herein.

WHEREFORE, I respectfully request that this motion for summary judgment be denied in all respects.

Robert R. Felton

ROBERT R. FELTON

Sworn to before me
this 7th day of November, 1973.

Robert R. Felton

ILONA D. MacFARLANE
Notary Public, State of New York
No. 31-0[illegible]
Qualified in [illegible] County
Term Expires [illegible]

REPLY AFFIDAVIT OF ROBERT R. FELTON DIRECTED TO MARINE MIDLAND'S OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT DATED NOVEMBER 11, 1973

UNITED STATE DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -X

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.

Defendants.

73 Civ. 2200-DBB

- -X

STATE OF NEW YORK)
SS.:
COUNTY OF NASSAU)

ROBERT R. FELTON, being duly sworn, upon information and belief, deposes and says:

I submit this affidavit in reply to Marine Midland's oppostion to my motion to amend the complaint herein.

My opponent, William Willis, showed his hand immediately "by pushing me to the wall." He moved immediately to dismiss my original complaint, requesting more particularity. Having thus obtained his Order, I obliged him with an amended complaint with particularity.

Then he asserted "priority" in deposition and once again obtaining his Order, I obliged with my prompt and full deposition, appearing at his disposition on four (4) days.

His characterization of my testimony in his opposition Memorandum was unfair and for that matter so were many of his questions, as well as his choice of those pages which he saw fit to include in his opposition Memorandum. If he considered any of my answers as evasive, he certainly could have moved accordingly, a course of action which he has obviously has taken and could not prevail.

Now, after having deposed his client Brownstein and after discovering many documents which relate and read a tale of fraud and conspiracy, and after instituting this timely motion, Willis cries "harassment" and charges "distortion."

I respectfully submit if there has been any harassment, Willis has done the harassing. And if there has been any distorting, defendants Brownstein and Marine Midland have done the distorting as I will attempt to show in this affidavit.

HARASSMENT

The original complaint named as a defendant Joel "Doe." Richard Lyons, Willis' assistant called my office and requested an adjournment to answer and in the course of our telephone conversation identified Joel "Doe" as one Joel Brownstein and further, Lyon admitted that Brownstein was still employed by Marine Midland. Thereafter Willis denied knowledge as to "Doe" and furthermore, after the personal service of Brownstein at his residence, Willis had the temerity to institute a motion to dismiss on the "grounds" that Brownstein was not named in the original complaint.

The amended complaint alleged that Brownstein was employed by Marine Midland Bank, New York. Brownstein denied this allegation and other allegations detailing Brownstein's duties of employment. Willis sat back on these denials and waited for Brownstein's deposition. The fair approach would have been to have called deponent and informed me that Brownstein was employed by the parent. In his opposition Memorandum, Willis terms the complaint's allegation of Brownstein's employment at Marine Midland Bank - New York as a "mistake." Brownstein was employed at 250 Park Avenue and at this address, Marine Midland Bank-New York has a branch office. There was no "mistake" in the original complaint, merely the fact that Marine Midland, by the overbearing efforts of Willis in his assertion of priority, had certain information which until the deposition of Brownstein, was in their complete control.

PERTINENT COMPLAINT ALLEGATIONS AND ANSWERS THERETO

Complaint Allegation 29. "Defendant Brownstein prepared a Report concerning defendant 3 I Co. during the year 1971."

Brownstein and Marine Midland Answers -- "Admitted."

Complaint Allegation 38. "Defendant Brownstein informed defend- and Nissan that he was preparing the aforesaid Report concerning defendant 3 I Co."

Brownstein and Marine Midland Answers -- "Admit the allegations contained in paragraph 38, and avers that Brownstein informed defendant Nissan (i) that he was preparing a report concering defendant 3i Company/Information Interscience, Inc. ('3i') and (ii) that said report was for use by Brownstein's employer only."

Complaint Allegation 43. "Defendant Brownstein mailed, delivered and/or distributed copies of the aforesaid Report to other firms, banks and or brokerage houses in the business and investment community."

Brownstein and Marine Midland Answers -- "Denied."

Complaint Allegation 44. "Defendant Marine Midland, by its officers, cemployees and/or agents mailed, delivered and/or distributed copies of the aforesaid Report to other firms, banks and/or brokerage houses in the business and investment comminity."

Brownstein and Marine Midland Answers -- "Denied."

Complaint Allegation 51. "Defendant Brownstein discussed the finances of defendant e I Co. with defend- and Brodsky prior to defendant Brownstein's preparation of this aforesaid Report."

Brownstein Answer -- "Admitted."

Complaint Allegation 52. "At the time of his aforesaid discussion with defendant Brodsky, defendant Brownstein knew that defendant Brodsky was the major stockholder in defendant e I Co."

Brownstein Answer -- "Denied."

Complaint Allegation 53. "Defendant Brownstein advised defendant Brodsky that he was preparing the aforesaid Report concerning defendant e I Co."

Brownstein Answer -- "Admits the allegations contained in paragraph 53, and avers Brownstein advised defendant Brodsky (i) that he was preparing a report concerning defendant 3i and (ii) that said report was for use by Brownstein's employer only."

Complaint Allegation 65. "Defendant Nissan obtained and/or received a copy of the aforesaid Brownstein Report on defendant 3 I Co."

Brownstein and Marine Midland Answers -- "Denies knowledge of information sufficient to form a belief as to the allegations contained in paragraph 65."

Complaint Allegation 67. "Defendant Brodsky discussed the finances of defendant 3 I Co. with defendant Brownstein prior to Brownstein's preparation of this aforesaid Report."

Brownstein Answer -- "Admitted."

DOCUMENTS

In view of the fact that certain of these documents have been previously identified as exhibits in the depositions, I shall refer to them as "Items".

(a) Documents produced by Brownstein and Marine Midland.

(1) Letter dated April 30, 1971 from Brownstein to Gerald Brodsky.

(2) Brownstein Report dated May 17, 1971.

(3) Brownstein Bulletin dated June 8, 1971.

(4) Letter dated June 23, 1971 from Gerald Brodsky (G. L. Brodsky) to Brownstein.

(5) Brownstein Bulletin dated August 10, 1971.

(6) Brownstein Bulletin dated September 24, 1971.

(7) Brownstein Bulletin dated October 20, 1971.

(8) Brownstein Bulletin dated October 22, 1971.

(9) Annual Report of 3 I Co. for fiscal year ended June 30, 1971.

(10) Letter dated November 1, 1971 from Jack A. Dalziel to Brownstein.

(b) Documents produced by Nissan

(11) Brownstein Report dated May 17, 1971.

(12) Brownstein Bulletin dated June 8, 1971.

(13) Brownstein Bulletin dated August 10, 1971.

(14) Brownstein Bullletin dated September 7, 1971.

(c) Documents produced by Edward J. Egan, Esq.

(15) Brownstein Report dated May 17, 1971.

(16) Brownstein Bulletin dated June 8, 1971.

(17) Brownstein Bulletin dated September 24, 1971, with covering letter dated September 28, 1971 from Egan to Louis Kengla.

(18) Brownstein Bulletin dated October 20, 1971.

(19) Marine Midland Bank-New York envelope postmarked October 21, 1971 addressed to Edward J. Egan.

FRAUD AND CONSPIRACY

(a) Brownstein's Report dated May 17, 1971.

Defendant Brownstein's Report misleadingly and falsely detailed the financial terms of defendant 3 I Co.'s purchase of a data bank license from defendant Excerpta Medica.

Defendant Brownstein's Report misleadingly stated the earnings per share of the defendant 3 I Co. for the fiscal year ended June 30, 1970 as a loss in the amount of $0.25, whereas defendant 3 I Co. had previously reported a loss of $0.34.

Defendant Brownstein's Report misleadingly, grossly overstated the estimate of earnings per share of defendant 3 I Co. for fiscal year ended June 30, 1971 as a profit in the amount of $0.40 on revenues estimated at $2,124,000.00. Defendant 3 I Co. sustained a loss of earnings of $0.33 per share for the fiscal year ended June 30, 1971 on revenues of $1,052,647.00.

Defendant Brownstein's Report misleadingly, grossly overstated the estimate of earnings per share of defendant 3 I Co. for the fiscal year ended June 30, 1972, as a profit in the amount of $1.00+. Defendant 3 I Co. sustained a loss of earnings of $2.42 per share for the fiscal year ended June 30, 1972.

Defendant Brownstein's Report misleadingly and falsely stated the "'71 P/E Ratio" of 3 I Co. as "32.5x". There was no P/E Ratio because there were no earnings, only losses.

(b) Brownstein falsely averred that his aforesaid Report was "for use by Brownstein's employer only."

This self-serving declaration by Brownstein was proved false by the following parties:

(1) JAMES NISSAN. Nissan, a defendant herein, was a Vice-President of defendant Walston and Co., Inc. Brownstein referred to Nissan as a "big producer," i.e., a high-pressure salesman selling large quantities of stocks. Walston and Co., Inc. "made a market" in 3 I Co. securities and accordingly was either in a "long" or "short" position in 3 I Co. securities. Brownstein certainly knew that any information to Nissan and/or Walston of his forthcoming Report would have an unsettling effect on the 3 I Co. market price.

Coincidentally Brownstein had a stock account with Walston for a period of four (4) years to date. Brownstein on his depositon "did not remember" the name of his account representative. Brownstein's "lack of memory" will be discussed infra.

Brownstein did, however, remember a number of personal visits to Nissan's office and car rides with Nissan uptown during which they discussed the finances of 3 I Co. and the state of the market prior to Brownstein's Report of May 17, 1971. Nissan in his deposition denied these visits by Brownstein.

As aforesaid, Brownstein admitted that he informed Nissan that he was preparing the aforesaid Report, but he added the self-serving declaration that he informed Nissan "that said Report was for use of (his) employer only."

Nissan admitted that he received the Report from Brownstein and Nissan's copy of this Report (Item 11) is annexed hereto.

Nissan also testified that he informed a number of his clients about the Report. I was one of Nissan's clients who was informed thereof. As a matter of fact I purchased 1000 share of 3 I Co. at $20.00 per share on June 7, 1971 in reliance on Nissan's informing me about this "favorable bank Report" and further, Nissan's stating that the bank was buying lots of stock for its customers.

Nissan further testified that he had Brownstein's Report photocopied and that he had these photocopies mailed to certain clients, among which was the President of the Bank of Paris.

I showed Nissan a letter from Jack A. Dalziel, (Item 10) at his deposition. Nissan testified that he knew Dalziel, but he could not be sure whether he had sent a copy of Brownstein's Report to Dalziel. The financial damage caused by Brownstein's Report and Brownstein's attendant actions are clearly evidenced in Dalziel's letter.

The "relationship" betwen Nissan and Brownstein as to those events after June 23, 1971 and certain "Bulletins", (Items 12, 13 and 14) will be discussed infra.

(2) MARTIN FALK. Falk is an employee of Goldman, Sachs, a large investment banking firm. Brownstin admitted knowing Falk as an "institutional rep" handling the Marine Midland account. Brownstein gave Falk a copy of his Report. Falk brought this Report to my home and I read it. Incidentally, Foss in the opposition affidavit, stresses that I only read this Report for approximately ten minutes. I submit that Brownstein's Report was so artfully drawn that its false, misleading and grossly overstated figures placed at the top of page 1 thereof, were easily readable. Its euphoric conclusion wherein Brownstein stated "The stock is being added to the Supervised List as a Special Situtation and is rated as Buy "confirmed Nissan's statement on June 7, 1971. Furthermore, Falk had been informed by a Marine Midland employee either in Rochester or Syracuse that Marine Midland was buying 3 I Co. stock. Falk himself purchased 3 I Co. stock which he later sold at a loss.

(3) EDWARD J. EGAN. Egan is an attorney with law offices at 250 Park Avenue, New York City. On October 25, 1973 he called my office and informed me of his personal loss sustained in 3 I Co. stock. Egan had learned of my identity through the Prospectus of Insyte Corporation. 3 I Co. was attempting to be merged into Insyte Corporation and this Prospectus described my litigation. Egan engaged me as his attorney and requested that he join this action as a co-plaintiff. I have accordingly moved to amend the complaint.

As is evidenced in Egan's affidavit,which I have hereto annexed, Brownstein's Report "for company use only" was given to Egan by one Garret O. Penhale and, furthermore, Penhale informed Egan that Marine Midlandwas buying 3 I Co. stock for some of its accounts. Penhale is an Assistant Vice-President of Marine Midland Bank-New York. Egan's copy of the Report (Item 15). is annexed hereto.

Parenthetically at this point I wish"to cast the lie"to Mr. Willis. The allegations in my complaint of wrong doing cancerously infecting the Marine Midland system, in Rochester or Syracuse, in New York, in the parent company and as later seen in the non-disclosures thereof, are grounded in fact and are not grounded on distorted inference and speculation.

Egan purchased 3 I Co. stock at $18.25 per share in reliance on Brownstein's Report and Penhale's statement and when the truth became evident, i.e., after the announcement of the substantial loss for fiscal year 1971, Egan was only able to realize $7.25 per share.

Of very great significance, Egan also received certain "Bulletins" from Marine Midland, (Items 16, 17 and 18) annexed hereto. Since these "Bulletins" relate to after June 23, 1973 these will be discussed infra.

(4) GERALD L. BRODSKY. Brodsky, until December 20, 1971 was the chief Officer and Director of 3 I Co. Brownstein knew that Brodsky was the major stockholder in 3 I Co. even though he denied Complaint Allegation 52 (supra.)

P. 205

"Q Did you know when you were speaking to Mr. Brodsky at any time prior to May 17, 1971 that Mr. Brodsky was the major stockholder in 3i Co.?

"A I think so, yes."

As aforesaid, Brownstein admitted that he informed Brodsky that he was preparing the aforesaid Report, but he also added the self-serving statement that he informed Brodsky "that said Report was for use by (his) employer only."

The utter hyprocisy of this aforesaid self-serving declaration by Brownstein is very evident in the reading of Brownstein's letter to Brodsky (Item 1):

"April 30, 1971

"Dear Gerry (Brodsky):

"Your visit and subsequent telephone conversation further convinced me of 3 I's extraordinary concept and merits. Hopefully, our investment posture will be aggressive....."

The transparent and contrived protective shield to the effect that although he informed Nissan and Brodsky that he was preparing the Report, that the Report was "for use by his employer only", has been pierced by Brownstein's giving of the Report to Nissan and Brownstein's letter of his intended aggressive buying of 3 I Co. stock to Brodsky more than 6 weeks antedating his Report.

(c) Brodsky's letter of disavowal and error.

Brodsky also received Brownstein's Report, because on June 23, 1971 Brodsky wrote a letter to Brownstein, (Item 4) annexed hereto.

This "Dear Joel" letter in no uncertain terms informed Brownstein of the errors contained in his Report as to earnings projections and other reported financial information.

(d) Brownstein's actions before and after June 23, 1971.

During his deposition and as his "answers" to questioning, Brownstein conveniently stated "I do not remember" approximately 175 times. As aforesaid, although he had a stock account with Walston for a period of four (4) years to date, Brownstein "did not remember" the name of his broker-account representative.

Brownstein did, however, remember being asked and answering questions about 3 I transactions at the office of the New York State Attorney General "some time in 1972."

Brownstein also remembered purchasing some 3 I Co. stock in 1971 and selling same at a profit before the announcement of the actual 3 I Co. losses for fiscal year 1971.

Brownstein testified that he prepared his Report based on the previous year 3 I Co. 1970 annual report, based on "chats" with Brodsky, Nissan and "other security analysts." His Report contained projections for 1971 and 1972, therefore the 1970 annual report was not of any significance. Brownstein's "lack of memory" casts serious doubts if there were any chats with other security analysts.

P. 92 "Q Did you look at the annual 10-K for the year 1970 as part of your preparation of the May 17, 1971 report?

"A No.

"Q You did not?

"A I didn't see the 10-K

"Q So what did you use -- I believe you said you didn't see the 1969 10-K or 1970 10-K correct?

"A Yes.

"Q So what did you use for purposes of preparation of the report of May 17, 1971 besides the annual report?

"A Conversations with Mr. Brodsky.

"Q And Mr. Nissan?

"A Let me finish the answer.

"Q I am sorry.

"A The materials that you see, chats with other

security analysts. It was a normal procedure, chats with Mr. Nissan, the normal procedure, you know, that I go through when I look at a company.

"Q I don't want to know the normal procedure. I want to know specifically.

P. 93 "A This was a normal procedure.

"Q Fine. You said the annual reports, the chats with Mr. Nissan and chats with Mr. Brodsky, that is Gerald Brodsky?

"A Yes.

"Q And chats with other analysts?

"A Yes. And whatever other information I could get.

"Q What were the names of the other analysts you had chats with as part of your preparation of the May 17, 1971 report?

"A Frankly, I don't remember.

"Q You don't remember at all.

"A No."

The actions of Brownstein after his receipt of Brodsky's aforesaid letter of disavowal and error completely destroy Brownstein's credibility and underline this major fraud and conspiracy.

P. 182 "Q Did you ever reply to this letter?

"A Yes

"Q What do you recall of what your reply was to the letter?

"A Just I was stunned by the letter. I tried to reach Mr. Brodsky for three weeks, maybe a month after. He did not return my phone call. When he finally did it was a long distance call. I remember he was in California. And I was, you know, upset about that letter. I said, 'Well, what about the letter?' He said, well, the attorneys suggested that he do that, but to forget about it, don't show it to anybody and throw it away.

P. 183 "Q When you got the letter did you call him the same day that you received it?

"A I most certainly did.

"Q Did you speak to anybody in Marine Midland Bank about the letter?

"A I don't remember.

P. 184 "Q Did you ever speak to Mr. Nissan about this letter?

"A I don't remember.

"Q When I say 'ever,' I mean from the time you received it to today, did you ever speak to Mr. Nissan about it?

"A I don't remember.

P. 209 "Q You have already testified up to the time you spoke to Mr. Brodsky you did not speak to anybody in the bank about the letter, correct?

"A That is correct.

"Q Did you ever speak to anybody in the bank about this letter?

"A Yes.

"Q Whom did you speak to?

"A I believe it was my boss.

"Q Mr. Messner?

"A No, Mr. Foss.

"Q Mr. Foss? What is his first name, again?

"A Richard.

"Q Richard. And when you spoke to him about the letter, did you show him the letter?

"A Yes.

P. 210 "Q Do you recall how long after you spoke to Mr. Brodsky you spoke to Mr. Foss about the letter and showed him the letter?

"A It was a couple of months.

"Q And that is October of 1971?

"A That is correct.

P. 213 "Q So when you spoke to Mr. Foss it was after 3i reported its results?

"A Right.

"Q What did you say to Mr. Foss when you first spoke to him in October?

"A I told him what the situation was.

"Q What did you tell him?

"A I told him about, you know, the company reported results that were not in line with my projection and that -- I showed him the letter. I really didn't know at the time what went wrong because Mr. Brodsky was unavilable and that was it.

"Q And what did Mr. Foss tell you?

P. 214 " A I don't remember what his reply was."

Although "stunned" by Brodsky's letter, Brownstein waited until October 1971, almost 3 months, to tell anyone at Marine Midland about his errors, as stated by Brodsky. Instead Brownstein chose to write follow-up Bulletins which will be discussed infra. The 1971 earnings for 3 I Co. were announced on or about October 1, 1971 and the stock plummeted to $7.00 per share.

Although he called Brodsky immediately upon his receipt of the letter, Brodsky did not return his call for 3 weeks to 1 month later. And all this time until he spoke to Richard Foss, Brownstein did nothing and told no one or did he?

P.258 "Q Did you ever see Mr. Nissan personally at any time after the May 17, 1971 report to date?

"A Yes.

"Q How many times did you see him after May 17, 1971?

"A I don't know.

"Q A number of times?

"A I don't know how many times.

"Q How many times did you see him the first month after May 17, 1971?

"A I don't know.

"Q Did you see him between May 17, 1971 and June 23, 1971?

"A I don't remember. I might have.

"Q Did you see him between June 23, 1971 and October 23, 1971?

"A I might have, yes."

Nissan testified that Brownstein called him and either read Brodsky's letter or paraphrased Brodsky's letter.

(e) Brownstein's Bulletins.

P. 283 "Q Basically bulletins cover new information learned after the report of May 17, 1971, is that right, Mr. Brownstein?

"A Referring to the ones you just referred to?

"Q Yes

"A Yes.

"Q Is there a bulletin covering Mr. Brodsky's letter to you?

P. 283 "A No.

"Q Did you ever prepare a bulletin with the copy of Mr. Brodsky's letter?

"A No.

"Q When you discussed Mr. Brodsky's letter with Mr. Foss and any other employees of Marine Midland Banks, was a bulletin prepared at any time from that time to date concerning Mr. Brodsky's letter?

"A No."

(e 1) Bulletin dated June 8, 1971 (Item 3)

Significantly in this Bulletin dated June 8, 1971 Brownstein concluded:

"..... we strongly urge that all remaining buying intentions be finalized as soon as possible."

P. 280 "Q What did you mean by the statement you haven't changed your opinion as to the stock and that you strongly urge that all remaining buying intentions be finalized as soon as possible when you wrote this on June 8, 1971?

"A Simply that the bank should finish taking their position."

This unguarded answer by Brownstein clearly shows his knowledge that these bank units were taking their specific positions in line with their account considerations, this despite Foss' opposition affidavit and Willis' opposition memorandum.

Incidentally I plan to depose Foss in what I consider to be his role in the "cover-up" of Brodsky's disavowal letter.

Furthermore I was informed by Nissan that monies were lent to 3 I Co. by Marine Midland and Brownstein confirmed this very important fact in his deposition.

P. 253 "Q Mr. Nissan advised me or informed me that the Marine Midland Bank loaned money to 3i Co. Do you know which unit lent the money to 3i Co.?

"MR. LYON: I object to the form of the question.

"MR. WELTON: I am directing the questions to you.

"Q Do you know which unit lent the money?

"MR. WILLIS: First you should ask him whether he know whether any money was lent.

P. 253 "Q" Yes. Do you know if any money was lent? 390a

"A Yes."

(e 3) Bulletin dated August 10, 1971 (Item 5)

The first paragraph thereof clearly shows Brownstein's duplicity in view of his prior receipt of Brodsky's letter of disavowal:

> "We regard the depressed level of 3i as an excellent buying opportunity. The downside pressure of recent weeks has primarily been due to poor market conditions brought about by currency problems and continued economic lethargy. Otherwise, no fundamental change has occurred in the original premise, as stated in our basic report dated May 17, 1971."

The fourth paragraph further underlines the fraud and conspiracy:

> "Since nothing has changed fundamentally, we would suggest re-reading our May 17th report."

(e 5) Bulletin dated September 24, 1971 (Item 6)

What more can be said, Brodsky's letter of disavowal and error and the sheer audacity of Brownstein:

> "Our designation remains - 'Special Situation' - Buy."

Brownstein testified that these depositions were not to be issued to the public, but were to be circulated within the units of the Bank. "Strangely" Nissan received copies of these Bulletins (Items 12, 13 and 14) annexed hereto. Egan received this Bulletin as well as Bulletin dated October 20, 1971 and I have annexed copies hereto (Item 17 and 18).

I respectfully wish to call the attention to the covering letter from Egan to his friend Bud:

> "September 28, 1971
>
> "Dear Bud:
>
> "Attached is bulletin from Marine Midland on 3i Company and also release from a broker.
>
> "It is interesting to note that Marine Midland still thinks it is a good buy."

I submit that in his failure to disclose the Brodsky letter in any of his Bulletins and in continuing to be euphoric about the prospects of 3 I Co., Brownstein led Egan and countless

thousands of other investors "to the slaughter", when the actual losses of 3 I Co. were announced.

Brownstein, however, did not wait until the announcement of actual losses in October, 1971 to sell his own stock. He sold at a profit prior thereto.

The actions of Marine Midland Banks, Inc., its subsidiaries, Mr. Richard Foss and other members of the Marine Midland Investment Policy Committee, and of course Brownstein prior to June 23, 1971, and thereafter to date, are obvious and actionable.

I cannot, nor I will not, accept Willis' and Foss' "gratuitous offer" of merely substituting Marine Midland Bank, Inc. for Marine Midland Bank-New York as defendant herein. Egan received the Report and Bulletins from an officer and an employee of the New York subsidiary. There is a "cancer" that permeates this Marine Midland system as to 3 I Co. stock transactions, manifested by "tipping", "leaking", and the distribution to the unsuspecting of the Brownstein Report and Bulletins, with an overlay of duplicity and non-disclosure of wrongdoing, under the guise of labelling the Report and Bulletins "for company use only."

WHEREFORE, I respectfully request that this motion to amend the complaint herein and to permit the service of the proposed amended complaint be granted.

Robert R. Felton

ROBERT R. FELTON

Sworn to before me this
11th day of November, 1973.

Leona D. MacFarlane

LEONA D. MacFARLANE
Notary Public, State of New York
No. 38-[illegible]
Qualified in Nassau County
Term Expires March 30, 1974

EXHIBITS SOME OF WHICH ARE ANNEXED TO REPLY AFFIDAVIT OF ROBERT R. FELTON DATED NOVEMBER 11, 1973 AND PLAINTIFF'S REPLY MEMORANDUM DIRECTED TO OPPOSITION TO CLASS ACTION MOTION

** Denotes that Exhibits appeared in both documents described above.

* Denotes that document appeared only in Plaintiff's Reply Memorandum to Opposition to Class Action.

April 30, 1971

Mr. Gerald Brodsky
3I Company/Information Interscience, Inc.
2101 Walnut Street
Philadelphia, Pennsylvania 19103

Dear Gerry:

Your visit and subsequent telephone conversation further convinced me of 3I's extraordinary concept and merits. Hopefully, our investment posture will be agressive. I look forward to future telephone conversations and/or personal visits.

Please add my name to your mailing list.

Sincerely yours,

Joel F. Brownstein

OFFICE MEMORANDUM

MARINE MIDLAND BANKS, INC.

New York, N. Y.

Investment Research Department

TO Mr. J. William Greve, Vice President

FROM Joel Brownstein

SUBJECT 3I Company - Information, Interscience, Inc. DATE September 24, 1970

Comments made by Gerald Brodsky, President of 3I.

3I Company (O-T-C)

Range*			
1968	1969	1970	9/23/70
69-5	40-9	16-5	7 1/4 Bid

Earnings Per Share** (fiscal begins 7/1)			
1968	1969	1970E	1971E
($0.13)	($0.46)	($0.23)	$0.65 - $0.80

* Stock split 3-for-1 January, 1969; Not adjusted for 1968.

** Based on about 1.5 million shares outstanding.

3I Company was created to cope with the explosion of technical and scientific knowledge rapidly [illegible]. Using computerized information technology, the company has developed the largest commercial, computerized scientific-technical data base in the world.

At the present time, 3I has licenses to use the following organizations' data banks:

I Excerpta Medica - provides 3I with the most sophisticated and extensive source of biomedial information in the world. In 1969, Excerpta gave 3I an exclusive licensing agreement for 15 years in return for 46,666 shares of 3I stock then valued at $1 million. In addition, 3I pays Excerpta $200,000 per year until $2.6 million is reached. Excerpta screens over 2 million pages of major medical journals annually, publishes over 140,000 abstracts, employs a permanent staff of 500 plus a specialized abstracting staff of 4,000 physicians throughout the world.

II American Chemical Society - through a licensing arrangement enabled 3I to become the first commercial organization to use the Chemical Society's computerized data base. Chemical Abstract Service is the largest chemical and chemical engineering information service in the world. Over 13,000 journals are screened annually, yielding approximately 250,000 abstracts.

III Engineering Index, Inc. - each year screens over 3,500 engineering journals, publications and proceedings of scientific meetings. This non-profit society enabled 3I, via an exclusive license, to become the first commercial organization to provide information services from this organization's computerized engineering data bank.

3I has been looking at other data banks, particularly in the patent area and another developed by the Physics Society. The company recently received a license to operate in Japan. It hopes to begin operations in that country by the end of this year.

[illegible] "D"

[illegible] NO. A-2d
BOMAK. REPORTER
d.d-3

Other parts of 3I's business are the following:

A. Scientific Literature Corp. - a wholly-owned subsidiary provides abstracing services to the National Institute of Health and the Department of Health, Education and Welfare. Over 3,000 bio-medical journals in more than 50 languages are surveyed by Scientific's staff.

B. American Micromation, Inc. - minority-owned affiliate that converts alpha-numeric information from computer generated magnetic tape to microfilm.

C. Computer Conversions, Inc. - an affiliate that supplies problem solving consulting assistance in converting second generation computers to more powerful third and fourth generation equipment.

All of the above licenses have added stability to 3I by minimizing the use of internal abstracting staffs, reducing operating margins. By comparison, in order for a company to obtain the exposure 3I gets through its licensing arrangements, it would take about $25 million in capital expenditures, significant technical expertise and, more importantly, time. Independent consulting is also performed.

E. Trenton Nassau Service Bureau - provides EDP service to its own clients. While this division is profitable, 3I is likely to sell it over the next several months, concentrating its energies in marketing information services and licensing additional data banks.

With the exception of Trenton-Nassau, the prior named subsidiaries and affiliates provide abstracting and indexing plus computer and microfilm skills essential in the processing of 3I's data base information.

Marketing and Management

Up until four months ago, 3I had 26 customers using its data banks. These included Cabot Corp., Humble Oil and Polaroid. Over the past four months, the company has increased its customer list to 68, including Eli Lilly, Charles Pfizer, Rohm and Haas, Bell Telephone Labs and Syntex. Recently, they have been approached by Xerox and RCA. If contracts are received from these two firms, then 3I's revenues and profitability will be increased beyond present indications.

As 3I adds to its customer list, the number of profiles (printout of specific information requested by a subscriber) increases, as each customer uses between 20 - 40 profiles per life of the contract (6 mos. - 1 year).

Depending on both elements of the profile, the "retrospective search" (historical search for information) and the "SDI" (Selective Dissemination of Information - essentially, a weekly printout of research journal abstracts dealing with a subscriber's specific interests), plus use of computer time and the company's technical staff, the charge for each profile could run between $2,000 - $4,000.

Presently, 3I has a marketing staff of five salesmen who concentrate on visiting companies having scientific staffs of 30 or more people engaged in research and development.

3I's President, Gerry Brodsky seems to have a good feel for the business.

Financial

For the fiscal year ending June, 30, 1970, 3I will probably show revenues of $2.0 million and a loss per share of $0.23. The previous fiscal year, 3I reported sales of $1.5 million and lost $692,000, primarily from conservative accounting methods as development costs were expensed as incurred, rather than capitalized. Also, about half of this loss, amounting to $300,000 was non-recurring and stemmed from non-consummated merger agreements. The total loss from fiscal 1970 operations will include a non-operating loss of $180,000 from the dissolution of Systan, Inc., a subsidiary engaged in the travel business, that accounted for $200,000 in revenues in fiscal 1969.

For fiscal 1970, 3I as presently constituted, with its customer list of 68 companies, many among the Fortune 500 list, could earn between $0.65 - $0.80 per share on revenues of $4 - $5 million.

Capitalization consists of 1.5 million shares of common stock, with about one-half closely held. There is no long-term debt.

Conclusion

Since 3I has expensed most of its development costs associated with its data banks and affiliated computerized systems (e.g. programming, indexing, etc.), the company has reached that point where even on small increases in sales, sizeable earnings gains will result.

The company is currently looking for a loan of $200,000 for two years. In return, 3I will give rights to subscribe to 20,000 shares of common stock around $7 per share anytime over this two-year period.

With the company willing to open its books for investigation, along with the availability of management to discuss the company at any time, a more thorough evaluation rather than this brief description, ought to be performed to ascertain this situation's investment worthiness.

MARINE MIDLAND
Investment Research
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INVESTMENT RESEARCH DEPT

3i COMPANY - INFORMATION INTERSCIENCE INC.

May 17, 1971

Recent Price	1971 Price Range*	Earnings Per Share** 1970	1971E	1972E	'71 P/E Ratio	Div.	Yield
13	18 - 6	($0.25)	$0.40	$1.00+	32.5x	-0-	-0-

* Bid prices in OTC market.
** Fiscal year ends June 30.

Introduction

Since its creation in April, 1966, 3i Company - Information Interscience Inc. [3i] has developed the world's largest commercial storehouse of scientific and technical information. In its early stages, the company's primary expertise was in using computerized technology to classify, index and retrieve specialized information. A highly qualified team of experts in various disciplines was responsible for the company's initial success. Since then, exclusive licensing arrangements with various organizations have enabled 3i to assemble a collection of data and develop software retrieval services, thus giving it a quasi-monopolistic status in the emerging "information industry."

Information Industry

During the present decade, the increasing amount of scientific and technical information being generated by our mechanized complex technologies will be explosive. The total market for information will become more vast and open-ended while the amount of time available for scientists and technicians to keep abreast of their fields will decline. It has been estimated that to keep apprised of all current developments within a specific discipline a scientist or technician must spend seven full days a week each year reading at an average speed. While this is hardly realistic, it dramatically illustrates the need for a company like 3i with its software abilities.

At the present time, fragmentation and lack of definition make it difficult to quantify the total market value of the industry. Few companies exist that are solely in the business of collecting and storing technical and scientific information which can be retrieved. Limited availability of data, storage and retrieval problems and the prohibitive costs of maintaining a staff to collect and program the information are apt to discourage entry into this field. If eventually there is formidable competition, 3i's long lead time will benefit the company. Since it can now profitably render this service, the company is on the threshold of explosive growth in revenues and earnings.

Description of Business

3i's Science Information Center uses on-going data bases in biomedical, technical and scientific fields. Brief descriptions of these follow:

1) Electrical & Electronics Engineering Data Bank - licensed from the Institute of Electrical Engineers. Approximately 2,000 journals, 9,000 patents and 500 conference proceedings are reviewed, indexed and abstracted each year. Some of the categories include Integrated Circuits, Semiconductors, Lasers and Microwave Technology. Output includes all standard bibliographic information, the author's affiliation and a complete abstract of the paper or patent.

The statements contained herein are believed to be reliable, but are not guaranteed. The opinions expressed are subject to change.

EXHIBIT "A"

2) Physics Data Bank - licensed from the Institute of Electrical Engineers. From the number of journals, patents and conference proceedings, more than 120,000 items of information are added each year, over 80,000 of which specifically pertain to physics. Topics include Thermodynamics, Nuclear Physics, Biophysics and Geophysics.

3) Chemical Data Bank - licensed from the Chemical Abstracts Division [CAD] of the American Chemical Society. This organization regularly reviews 13,000 chemical and chemical engineering journals and over 600 specialized journals. CAD is the largest such organization in the world, producing more than 250,000 abstracts in 80 subjects each year. This data bank contains the following services: 1) Chemical Titles, covering the most productive titles in the chemical field; 2) Chemical Abstracts, covering 13,000 journals, patents issued by 26 countries, new books, conference proceedings and government research projects pertaining to the chemical sciences; 3) Chemical-Biological Activities, covering papers reporting the interactions of organic compounds with biological systems, plus related metabolism and in-vitro chemical studies; and 4) Polymer Science and Technology, containing digests of current technical reports relating to polymer chemistry.

4) Engineering Data Bank - compiled by Engineering Index, the leading authoritative source of information on the world's engineering developments - regularly reviews more than 3500 publications and conference proceedings and records more than 72,000 items annually. Fields covered include civil, mechanical, electrical and plastics engineering.

5) Computer Science and Technology Data Bank - licensed from the Institute of Electrical Engineers. Over 20,000 documents are referenced. Included are the fields of Control Science, System Design, Cybernetics, Numerical Analysis, Logic Design and Peripherals.

6) Biomedical Data Bank - licensed from the Excerpta Medica Foundation in Amsterdam. Over 3,500 biomedical journals provide the source material. Approximately 2 million pages (roughly 250,000 articles) are screened annually. These 250,000 references currently yield 80,000 abstracts. Procedures required to prepare, edit, supervise and index the scientific content of this information are handled by Excerpta's practicing specialists. Formed in 1946, Excerpta began computerization of their data files early in 1968. Through a wholly owned subsidiary [Excerpta Medica Information Systems, Inc.] 3i provides this exclusive service all over the world.

7) Drug Literature Program - licensed from the Excerpta Medica Foundation. It provides specific needs and requirements of pharmaceutical industrial companies for highly specific medical and chemical information on experimental and marketed drugs and chemical compounds derived from the total international biomedical literature. Using more than 40,000 selected articles, the following information is stored with respect to each drug or compound, whether experimental or marketed:

a) Full citation of the article.
b) Generic name of drug or compound.
c) Chemical name if generic name is unknown.
d) Experimental name or code of experimental drug or compound.
e) Chemical structure information on all drugs.
f) Trade or brand name.
g) Clinical indications or contra-indications.
h) Clinical or pharmacological effects.
i) Side effects, if drug.
j) Name and location of manufacturer.

8) Crowell, Collier & MacMillan (CCM) data bank - created from information compiled by CCM as to possible trends in many scientific fields. These are unpublished papers soon to be delivered at major conferences throughout the world.

9) 3i Company - Environmental/Health Data Bank - generated by 3i's staff of experts, contains biomedical information on the environmental and etiological aspects of health. Subjects include air pollution, pesticides, medical electronics, pharmaceuticals, cosmetics, water pollution and waste.

Through Scientific Literature Corporation [SLC], the company makes available to government agencies special technical services performed by a highly qualified staff of documentalists who scan, index, edit and abstract. Present contracts include the National Institute of Health of HEW. In addition, SLC publishes the only two abstract journals distributed by the National Cancer Institute. An abstract journal is also prepared for the National Institute of Arthritis and Metabolic Disease. SLC also has contracts to abstract and index papers for the National Institute of Mental Health. It indexes over 40,000 papers annually for Index Medicas and the Medlars System of the National Library of Medicine. Other special technical services include preparation of bulletins and studies covering a client's subscription.

Microfilming services are provided through an affiliate, American Micromation Industries, Inc. Another affiliated company, Datapro Research Corporation [DRC], compiles and publishes technical reports on computer and computer-related products, primarily analyzing data processing equipment and software. The company's principal publication, Datapro 70, is used by CPA firms, manufacturers, computer users and consultants throughout the world. DRC also provides specialized consulting services to both users and manufacturers of EDP products.

Except for its Engineering and Chemical data banks, 3i is exclusively licensed to use the previously described data banks. However, a verbal agreement with the Engineering & Chemical Societies preclude the use of their data banks by commercial organizations.

A basic problem for software service companies is in obtaining an experienced operating staff. This has been no problem for 3i because its extremely knowledgeable highly-qualified personnel have been able to profitably use the collective efforts of 9700 full- and part-time technicians employed by the various data bank licensors who review over 25,000 scientific journals a month in 52 languages. The lack of qualified personnel is a major deterrent toward duplicating 3i's approach. Ease of entry in this field is also discouraged by the amount of capital required. For example, Excerpta Medica, in existence since 1946, spends about $7 million annually for organizational expenses incurred in adding current information to its data bank. If a potential competitor could obtain the necessary manpower and acquire the data, substantially in excess of $10 million would be needed yearly to keep current in the disciplines covered by 3i.

Pricing is determined by 3i's two types of information services: 1) Selective Dissemination of Information (SDI) based on a client's interest profile and 2) Retrospective Search. The charge for each interest profile averages $1500 (depending on the data bank used) for a one-year subscription.; but a six-month trial subscription is also available at a lesser rate. On average, each subscriber has been using about 15 profiles for each year's subscription. The retrospective search costs $150, each subscriber averaging about ten a year.

The following is a description of these two services.

Selective Dissemination of Information is a system in which each new information item added to 3i's data base files is matched against a user's interest profile. If it matches, an information card containing title, author, affiliation, source, identification number, index terms and abstract (where available) is sent. This process is performed either weekly, bi-weekly or monthly. For effective monitoring, a "feedback" card is attached to each information card to determine the relevance of the information. The purpose of this is to "retune" the user's profile so that the subscriber can obtain maximum value. Each time an information card matches a client's profile, a "hit" results, usually costing $0.05, but ranging up to $0.30. On average, 80% of the information cards match, the bulk of the charge covering maintenance expense.

Retrospective Search enables the subscriber to search all information stored in any data base file via telephone, TWX or by mail. Results can be printed in several formats either on cards or computer paper. 3i puts no limitation on the number of retrospective searches a client can make during the length of the subscription. If the information requested precedes 3i's data bank, the company will resort to standard manual searching.

It takes about 30-60 days to develop a user's profile and a total of 120 days for a subscriber to effectively evaluate 3i's services. In the past the company charged on a monthly basis after the service was performed; now fees are billed in advance. This change was made to accelerate the company's receivables and improve cash flow, which had been erratic in the past. 3i's objective is to work closely with each client in order to increase monthly volume by 10% and it has been very successful.

Some of the corporations and governmental agencies currently subscribing to 3i's services include Industry: Pfizer, Goodrich, Rohm & Haas, A. H. Robbins, Esso Research & Engineering, U.S. Steel, Union Carbide, Polaroid, Bell Telephone Labs and Colgate-Palmolive; and Government: NASA, U.S. Food & Drug Administration and the Library of Congress. 3i has found that large companies and government agencies are easier to sell as they usually have a staff of research people whose information-gathering responsibilities could now be assumed by 3i, thus saving precious time and money. Small- and medium-sized companies, infrequently solicited by 3i's salesmen in the past, usually do not have large in-house research facilities. In order to add these clients to its subscription lists, the company has begun using direct-mail and other forms of advertising to screen prospective customers thereby maximizing the effectiveness of its sales staff.

At a recent American Chemical Society meeting in California, a combination paper-reading and slide presentation by A. H. Robbins Co. strongly endorsed 3i's services, stating that the company is able to provide better than 79% of the information Robbins needs to conduct its research. It also found that 3i offers the most comprehensive, most referenced and most specific service of its kind and no other data base in the world covers a range of medical literature like Excerpta Medica.

3i is presently discussing a licensing agreement with organizations in France, England and Italy. In Japan, a joint venture to duplicate 3i's services is being discussed. Prices for 3i's services overseas will be the same as in this country plus a small commission charge that will accrue to the licensee. With no selling expenses, generation of foreign revenues is expected to be significant for 3i over the next few years.

Through Excerpta Medica, 3i began selling its services in Europe during the past two months. While it is almost impossible to place parameters on the size of the foreign market, the company estimates it to be substantial.

Financial

400a

For the year ended June 30, 1970, 3i had net revenues of $1.4 million and a loss from continuing operations of $406,000 or $0.25 per share. A non-recurring loss of $149,000 stemmed from the sale of Systan, a discontinued operation.

To date, results have been affected by conservative accounting methods as the company has expensed development costs as they were incurred rather than capitalize them. While 1970 figures included a non-recurring loss from the sale of Systan, semi-annual 1971 results included a non-recurring loss from the recent sale of Trenton-Nassau.

In November of 1970, 3i borrowed $225,000 from Chemical Bank at an interest cost of 1% above the prime rate. These proceeds were used to alleviate cash-flow problems resulting from uncollected receivables, since remedied by changes in billing procedures. This short-term loan was to be repayable in August of 1971 but has been extended to February, 1972, at no additional cost to the company. This is the extent of 3i's debt.

The company has also extended to July, 1972 the right to begin repurchasing its shares at fixed prices originally sold to Excerpta Medica in exchange for the exclusive right to Excerpta's data bank. The $1 million paid for this agreement will be written off over a 40-year period. The company's auditors are in the process of finalizing this new arrangement which includes worldwide rights for Excerpta Medica's services except in Holland.

While no specific estimate is made of current and future operating revenues and profits, 3i will continue to be profitable, as reflected in significantly better quarterly comparisons. With developmental costs expensed, the possibility of paring down the company's computer facilities to better accommodate the present level of revenues could result in additional cost savings. The key to its present and future success lies in its capability to generate an increasing volume of revenues which will yield higher profits. Some examples of these possibilities are:

With monthly operating costs approximately $100,000, the following assumptions can be made:

Annual Gross revenues	Pre-tax Income	After-tax Income
$4 million	$2.6 million	$1.3 million
6 "	4+ "	2+ "
12 "	10+ "	5+ "

Even though gross volume doubles, the computer runs the same amount of time and produces about the same operating expenses, so that pre-tax margins dramatically improve and could theoretically be as high as 80%.

The following is a schedule projecting 3i's leverage in fiscal 1971:

Quarter	Revenue	Profit	Pre-tax Margin
1st	$361,000	$-70,000	-
2nd	413,000	+40,000	9.6%
3rdE	550,000	+250,000	45.0
4thE	800,000	+500,000	62 5
	$2,124,000	$+720,000	33.8%

These projections are based on the company's present breakout into profitability. Depending on marketing expertise and other near-term factors, the figures estimated may not result for another one to three months. However, this does not alter the character of the situation. 3i provides a valuable service by, in effect, solving the basic problem of a software service company in that it does not have to employ the 9700 technicians needed to provide the product. This places a substantial limit on the cost of doing business and lets the bulk of revenues flow to the bottom line.

We estimate that fiscal 1971 results will be in the range of $0.40-0.45 per share on revenues in excess of $2 million, which will be untaxed due to tax-loss carry-forwards. While minimum expectations are for profits to double each year over the next five years, the fact that an increasing amount of revenues will flow down to net income implies a projection of more than $1.00 per share for fiscal 1972.

The stock of the company was offered to the public in 1968 when 110,000 shares were sold at $5.00 a share. After reaching a bid price of 69 in 1968 and 120 in 1969, the stock was split three for one. About 1.6 million shares are outstanding, with management holding less than 300,000. No financing is anticipated by the company in the next year.

The present Board of Directors consists of the following four men: Gerald L. Brodsky, President since 3i's inception; Frederick B. Gilles, Vice President Technical Director of 3i (with the company since November of 1966); Arthur C. Haines, Vice President, who manages 3i's Science Information Center and has been associated with the company since May 1968; and Peter A. Warren, Director and Executive of Excerpta Medica.

Conclusion

3i's leadership in the "information industry," an open-ended market in which potential is vast, portends continued growth in revenues and profits. A capable management team and highly qualified staff have guided the company to the point in its operations where relatively-fixed overhead costs allow an increasing proportion of revenues to flow through to earnings. Its software expertise, depth and exclusivity of its data bases, and strong marketing position, which is enhanced by Excerpta Medica, will help to accelerate the trend toward improved profitability which began in the second quarter. While the stock is speculative, we are recommending its purchase in those accounts which permit equities of above-average risk. The stock is being added to the Supervised List as a Special Situation and is rated as a Buy.

J. Brownstein

BULLETIN

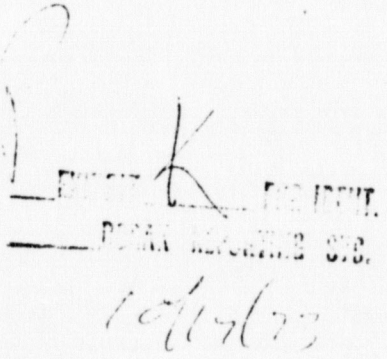
3i Company - Information Interscience Inc. (2? Bid)

Joel Brownstein June 8, 1971

Last week, 3i announced an agreement in principle to acquire for stock, privately held Information Company of America (ICA). Formed in 1968, ICA is a computer software service company providing proprietary computerized information services, computer publications and computer systems design. The company will add to 3i's growing number of data banks, an architectural/engineering data bank and an agricultural chemicals data bank. ICA has been operating profitably, grossing about $200m before taxes on annualized revenues of $600m.

For 3i, the key to this acquisition is ICA's highly qualified principal officers, well-known in the "Information Industry". These four men will bolster the present corporate management team, in particular, heading separate marketing and financial areas. There expertise will enable 3i to more effectively merchandise its services, accelerating the company's growth.

Since we last recommended 3i on May 17, 1971, the stock has risen dramatically, in anticipation of a good third quarter. We have not changed our opinion, continuing the Special Situation purchase recommendation at current levels where account considerations permit. However, we strongly urge that all remaining buying intentions be finalized as soon as possible.



** LETTER FROM BRODSKY TO BROWNSTEIN DATED JUNE 23, 1971 403a

3i Company | Information Interscience Incorporated
2101 Walnut Street, Philadelphia, Pennsylvania 19103 (215) 569-9717

G. L. Brodsky, President

June 23, 1971

Mr. Joel Brownstein
Marine Midland
250 Park Avenue
New York, New York

Dear Joel:

I have received the report which you have prepared on the prospects of 3i Company, which you have indicated has been circulated within your bank: I see that the report contains earnings projections and other reported financial information which is in error.

3i Company has consistently maintained a policy of not making any projections of its earnings and the responses I gave to you in our meeting and telephone conversation in which you made inquiries of me as to the Company's affairs and prospects certainly did not include any financial results or other information which could or should be used as a basis for an accurate estimate of the Company's prospects.

While 3i and I have no desire to participate in the preparation by your bank of any report relating to 3i Company nor any wish to review such a report, and the contents of any such report cannot be attributed to 3i or myself personally, I felt compelled to write this letter to you so that it was clear that neither 3i Company nor I, personally, had furnished any information relating to earnings and we are not responsible for any information contained in your report relating to the Company's earnings prospects.

Sincerely,

3i COMPANY/INFORMATION INTERSCIENCE INCORPORATED

G. L. Brodsky
President

GLB/mdt

** BROWNSTEIN BULLETIN ON 3 I COMPANY DATED AUGUST 10, 1971

MARINE MIDLAND

Investment Research

BULLETIN

3i ($15 3/4 Bid)

J. Brownstein August 10, 1971

EXHIBIT H FOR IDENT.

BOWAN REPORTING S/C.

10/27/79

We regard the depressed level of 3i as an excellent buying opportunity. The downside pressure of recent weeks has primarily been due to poor market conditions brought about by currency problems and continued economic lethargy. Otherwise, no fundamental change has occurred in the original premise, as stated in our basic report dated May 17, 1971.

The business continues to expand at a healthy pace. Monthly operating costs are still below $100,000. As the principals of Information Company of America (ICA) become more involved in 3i's business, management becomes better equipped to facilitate corporate growth. On a pro-forma basis, ICA's business will add about $50m in monthly revenues, and yield roughly $20m pre-tax.

To further reduce costs, 3i recently moved its computer facilities to the West Coast, opening an office to effectively handle that area's high volume of potential business. The national accounting firm of Lybrand, Ross Brothers and Montgomery have been retained by the company as its official accountants. Within the next two weeks, a preliminary estimate of fiscal 1971 will be released to the public.

Since nothing has changed fundamentally, we would suggest re-reading our May 17th report.

In spite of general market conditions, these levels provide an opportunity to average down high-cost positions. Our designation remains Special Situation - Buy.

ERRATA: In our basic report on 3i, the first paragraph under the heading "Information Industry" contained an omission. We stated in our report: "It has been estimated that to keep apprised of all current developments within a specific discipline a scientist or technician must spend seven full days a week each year reading at an average speed." The sentence should have read: "It has been estimated that ten years from now, in order to keep apprised of all current developments within a specific discipline, a scientist or technician must spend seven full days a week each year reading at an average speed."

MARINE MIDLAND

Investment Research

BULLETIN

3i Company (16 3/4 Bid)

J. Brownstein September 24, 1971

Attached is the text of a press release recently issued to the information community. It will soon be made available to stockholders.

Our designation remains - "Special Situation" - Buy.

EXHIBIT 2 F.T.C.

BUREAU REPORTING SYS

1/10/73

3i Company | Information Interscience Incorporated
2101 Walnut Street, Philadelphia, Pennsylvania 19103 (215) [illegible] 9717

FOR IMMEDIATE RELEASE

September 7, 1971

3i COMPANY DISCLOSES WORLD BOOK CONTRACT

Philadelphia, Pennsylvania...3i Company/Information Interscience Inc. announced the completion of a two-year project to help produce a unique, computerized system for the production of a brand-new 150,000 entry index to World Book Encyclopedia.

The work, described as a "landmark step" was performed by a 3i subsidiary, Information Company of America, and the resulting index will make its appearance in the 1972 edition of the encyclopedia.

The complex computer system and programming was developed by a staff headed by Dr. Irving H. Sher, ICA's vice president of research and development. Field Enterprises Educational Corporation, publishers of The World Book, in describing Sher's work called it "true genius".

This will be the first index to a general encyclopedia ever produced by computer.

In addition to producing the index, the system acts as a feedback mechanism to check and control editorial processing, controls some of the most complex alphabetical and hierarchical arrangement routines ever devised, and enables World Book editors to have complex flexibility in adding, deleting and shifting information as part of the continuing updating of the encyclopedia.

The system, in addition to improving the consistency of indexing, accounts for variations in different languages and alphabets.

The system, which took two years to produce and is written in BAL, covers the input of data on a special 256-character keyboard, processing on an IBM 360/30 64K computer, and provides an interface with a 360/40 in preparation for Videocomp-phototypesetting.

3i offers a wide range of services including operation of a computerized medical, technical and scientific data bank, business and professional computer systems, and literature analysis services.

**BROWNSTEIN BULLETIN ON 3 I CO. DATED OCTOBER 20, 1971
AND NEWS RELEASE DATED OCTOBER 18, 1971

MARINE MIDLAND
Investment Research

BULLETIN

3i Company ($6 Bid)

J. Brownstein October 20, 1971

Several definitive statements can be made at this time:

1) Gerald Brodsky has been removed as President and Chief Executive Officer of the company. Assuming these positions will be Arthur Elias, who will also be Chief Operating Officer.

2) Consideration is being given to change the name of the company to Information Company of America.

Attached is the statement recently released by the company to stockholders. More financial details will be available, probably before November 15th, when the annual report and certified audit will be released. Other than the information attached, we have no further comment at this time.

EXHIBIT FOR IDENT.
DURAN REPORTING S.C.
1 10/73

Dear Shareholder:

Since a number of recent important events have occurred at 3i which will result in some delay in the preparation and distribution of our Annual Report, I am writing to you now to familiarize you with these developments and to provide you with a brief but current status report of the Company's activities.

In order to fully utilize the extensive expertise in data bank operations and marketing brought to 3i as a result of our recent acquisition of Information Company of America (ICA), we have been actively engaged in the integration of ICA's skilled management into the 3i business. I am pleased to announce that Mr. Arthur W. Elias, formerly President of ICA, has been elected President and Chief Operating Officer of 3i. I will continue to serve 3i as Chairman of the Board and Chief Executive Officer. In addition, the following former ICA officers were elected as 3i officers: Mr. Marvin S. Riesenbach as Vice President and Treasurer, Mr. Marvin Schiller as Vice President/Marketing and Dr. Irving H. Sher as Vice President/Information Services. Messrs. Elias and Riesenbach have also become members of 3i's Board of Directors. Mr. Arthur C. Haines will continue as Vice President/Science Information Center and Mr. S. Sim Kessler will continue in his present position as Vice President/Scientific Literature Division. Dr. Frederick B. Giller, who was a Director and officer, is no longer with the Company.

I am also pleased to announce that the Company has entered into agreements for the acquisition of the business and assets of Venture Data Corporation and American Micromation Industries Inc.

Venture Data, a publicly held company based in the Philadelphia area, maintains an educational data bank from which college guidance services are produced, and provides information systems services to business and industry. Venture Data will add important marketing and technical capabilities to 3i's organization.

3i has been a significant shareholder in American Micromation Industries (AMI) since its inception. AMI provides computer output microfilming (COM) and other microfilming services, as well as scientific and technical translation services for clients in many industries including pharmaceutical, chemical and engineering. 3i's management believes that it is now desirable for 3i to have complete ownership of this affiliate.

Both acquisitions will be made for Common Stock of 3i subject to approval of the shareholders of Venture Data and American Micromation Industries.

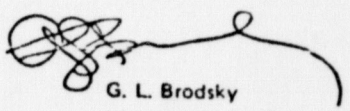
The combination of technical, management, marketing and administrative know-how of 3i, ICA and the new acquisitions is most exciting. The overall effect will be to expand the scope of our data bank capabilities and expand markets for 3i information services. As one example illustrative of these expanded markets, I enclose a copy of a recent release describing our major contribution to the newly created World Book Encyclopedia Index and Research Guide.

As we announced on August 30, 1971, we have recently engaged Lybrand, Ross Bros. & Montgomery as our auditors. The annual audit is not completed, but we can advise you at this time that preliminary, unaudited figures for the fiscal year ended June 30, 1971 indicate revenues of $1,052,000 including $204,000 from operations of the Trenton-Nassau Service Bureau which was sold during fiscal 1971. Revenues for the previous fiscal year were $1,403,000 including $460,000 from Trenton-Nassau Service Bureau. The decrease in revenues resulted principally from lower revenues from Trenton-Nassau and from the unanticipated termination of a major contract which was reported earlier in this fiscal year. On an unaudited basis, it appears that the Company incurred a loss of $402,000 before development expenses of $178,000 and an extraordinary gain of $37,000 for the fiscal year ended June 30, 1971. In the prior fiscal year the loss was $315,000 before development expenses of $91,000 and a $14[illegible],000 loss on a discontinued operation.

We are disappointed that technical development and start-up of the data bank operation continued into the fiscal year ended June 30, 1971. This was largely due to significant problems resulting from a supplier's discontinuance of a data bank and its subsequent replacement from another source. 3i incurred major costs in connection with these unforeseen developments, all or some part of which may ultimately be recovered.

We are confident that our expanded capabilities, as reflected by our outstanding new management group and our recent acquisitions, have greatly enhanced our opportunities for success. I will, of course, comment further on these developments, as well as on the Company's affairs during the past year, in my letter to you in the forthcoming Annual Report.

Sincerely,



G. L. Brodsky
Chairman of the Board

MARINE MIDLAND

Investment Research

BULLETIN

3i Company ($7)

J. Brownstein October 22, 1971

Attached is the latest communication from the company.

EXHIBIT 1 FOR IDENT.
BORAK REPORTING SVC.
1/24/73

3i Com, any | Information Interscience Incorporated
2101 Walnut Street, Philadelphia, Pennsylvania 19103 (215) 569-9717

NEWS RELEASE
October 18, 1971
Contact: Mary Todd

3i Company/Information Interscience Incorporated today issued a correction to a letter to its Shareholders dated October 13, 1971. The correction states that Mr. Arthur Elias, formerly President of its recently acquired Information Company of America subsidiary, has been named as Chief Executive Officer as well as President of 3i.

Arthur W. Elias, ICA's President, was Manager of Science Information Services at both Wyeth Laboratories Division of American Home Products and Warner-Lambert Research Institute, and was Vice President of the Institute for Scientific Information. Since 1964, he has been Editor of the Journal of the American Society for Information Science, the official publication of that Society. He has also edited several information science books and is the author of numerous technical papers in the field.

The titles of Messrs. Riesenbach, Schiller and Sher remain as stated in the letter.

The new management group is thoroughly conversant with data bank sales and management, Dr. Sher having designed the first commerical SDI system offered in this country. As a result of this experience, the multiple data banks which have been obtained, and the implementation of the software needed to put this information into the proper form for sales exploitation, it is believed that the data bank area will contribute strongly to the growth of the company.

It was also noted that the Company is undertaking preliminary steps to change its name to Information Company of America.

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** LETTER DATED NOVEMBER 1, 1971 FROM JACK A. DALZIEL TO BROWNSTEIN

411a

JACK A. DALZIEL INC.

465 Calif. SF.

SF 94104

70 KING AVENUE
PIEDMONT, CALIFORNIA 94611
PHONE (415) 653-2731

November 1, 1971

Mr. J. Brownstein
Marine Midland Investment Research
Marine Midland Grace Trust
140 Broadway
New York, New York

Dear Mr. Brownstein:

RE: 3i Company - Information - Interscience

Your report of May 17, 1971 suggested a profit potential for the company in 1971.

The recent drop in the price of the stock suggests perhaps that continued losses are expected.

Have you issued any follow up to your May 17 report? If so, would you be kind enough to send me a copy? Thank you.

Yours truly,

Jack A. Dalziel

JACK A. DALZIEL, INC.

* 3 I CO. CONSOLIDATED BALANCE SHEETS JUNE 30, 1970, JUNE 30, 1969

3i Company/Information Interscience Incorporated
Consolidated Balance Sheet

412a

Assets

Current assets	June 30, 1970	June 30, 1969*
Cash	$ 36,742	$ 36,569
Marketable securities, at cost and accrued interest	—	548,618
Accounts receivable	330,286	467,915
Other current assets	13,428	31,885
Total current assets	380,456	1,084,987
Investments in affiliated companies, at cost, (note 2)	112,500	92,500
Fixed assets, at cost, less accumulated depreciation of $50,947 and $31,931 (note 4)	101,302	69,979
Data bank licenses, at cost (note 1)	1,028,606	—
Data bank and systems development cost, at nominal value	1	1
Other assets	24,354	62,130
Total assets	$1,647,219	$1,309,597

Liabilities and Shareholders' Equity

Current liabilities		
Accounts payable	$ 200,084	$ 105,814
Accrued expenses	89,285	144,394
Total current liabilities	289,369	250,208
Shareholders' equity (notes 1 and 6)		
Common stock, Class A, par value $.10; authorized 3,000,000 shares, outstanding 1,517,770 and 1,372,175 shares	151,777	137,218
Common stock, Class B, par value $.10; authorized 300,000 shares, outstanding 132,475 and 154,480 shares	13,248	15,448
Capital in excess of par value	2,649,274	1,807,595
Accumulated deficit	(1,456,449)	(900,872)
Total shareholders' equity	1,357,850	1,059,389
Total liabilities and shareholders' equity	$1,647,219	$1,309,597

*Restated

The accompanying notes are an integral part of the financial statements.

3i Company/Information Interscience Incorporated
Consolidated Statement of Operations

	For year ended June 30, 1970	1969*
Net revenue (note 1)	$1,402,760	$1,256,936
Costs and expenses		
Operating expenses	1,259,821	1,203,130
Selling and administrative expenses	549,348	440,666
	1,809,169	1,643,796
Operating loss on continuing operations	406,409	386,860
Operating loss of discontinued operation (note 1)	149,168	14,456
Net loss before extraordinary item	555,577	401,316
Expenses of non-consummated merger	—	291,144
Net loss	$ 555,577	$ 692,460
Loss per share based on weighted average shares outstanding		
Loss from continuing operations	$.25	$.26
Loss from discontinued operation	.09	.01
Extraordinary item	—	.20
Net loss	$.34	$.47

*Restated

The accompanying notes are an integral part of the financial statements.

Accountants' Report to the Board of Directors
3i Company/Information Interscience Incorporated

We have examined the consolidated balance sheet of 3i Company/Information Interscience Incorporated and subsidiaries as of June 30, 1970 and the related consolidated statement of operations for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, subject to the realization of carrying value of data bank licenses and investments in affiliated companies as discussed in notes 1 and 2 of Notes to Consolidated Financial Statements, such financial statements present fairly the financial position of 3i Company/Information Interscience Incorporated and subsidiaries at June 30, 1970, and the results of their operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Main Lafrentz & Co.

Philadelphia, Pennsylvania
November 20, 1970

Company/Information Interscience Incorporated
Notes to Consolidated Financial Statements

1. Principles of Consolidation, Accounting Matters, and Subsequent Events

The consolidated financial statements include the accounts of the Company and its subsidiaries. During the fiscal year, the Company discontinued the operation of its wholly-owned subsidiary, Systan, Inc., which is in currently in the process of selling. This acquisition, in July, 1969, was originally accounted for as a pooling of interests in the financial statements for the fiscal year ended June 30, 1969, which have been restated in the accompanying financial statements to reflect the discontinuation of Systan's operations. The Company's investment in Systan, net of operating losses, is included in other assets in the amount of $3,555.

Net revenues for 1969, as reflected in the Consolidated Statement of Operations, have been reduced by $114,656 accompanied by a like reduction in expenses relating to a contract settlement in such year.

On November 2, 1970, the Company amended the agreement whereby it acquired Scientific Literature Corporation (SLC), a wholly-owned subsidiary. The amended agreement released the Company from certain restrictions in regard to the operations of SLC and requires the Company to issue to the former shareholders 44,800 shares of Class A common stock which have been or could have been earned contingent upon earnings of SLC. These shares are reflected as outstanding in the accompanying financial statements. In the opinion of the Company, SLC will achieve the necessary earnings which would have entitled the sellers to receive these shares under the original agreement.

In September, 1969, the Company entered into an agreement, subsequently amended in June, 1970, with Excerpta Medica Foundation, a foreign non-profit corporation, for the exclusive right within the United States to market information services from Excerpta's data bank of biomedical information. The consideration for this right is $1,000,000, including 46,666 shares of Class A common stock issued in October, 1969, which the Company can be required to purchase at $15.00 per share in October, 1971, and 30,000 shares of Class A common stock to be issued on December 1, 1970 which the Company can be required to purchase at $5.00 per share in July, 1971. The shares to be issued on December 1, 1970 have been reflected as outstanding in the accompanying financial statements. At its option, the Company can extend this agreement starting July 1, 1971 and thereafter until 1984 by the payment of additional considerations. An amendment to this agreement affecting the extension of certain dates and changes in additional consideration is currently being negotiated.

During the second half of the fiscal year ended June 30, 1970, the Company commenced marketing its services in connection with the data bank licenses acquired during the year, and had not realized any significant amount of revenues from these services. Accordingly, the Company has not begun to amortize the acquisition costs of these rights and has deferred the determination of its policy in regard to the amortization.

In November, 1970, the Company borrowed $225,000 from a bank, repayable in August, 1971, at interest of 1% above the prime rate. The President of the Company, his brother, and certain other individuals have guaranteed repayment of the note. In consideration for this guarantee, the guarantors, with the exception of the President, will be issued warrants to purchase, during the next three years, in the aggregate of 45,000 shares of the Company's Class A common stock at $3.50 per share for the first nine months and $4.50 per share thereafter. In addition, the bank will be issued warrants to purchase 5,000 shares of the Company's Class A common stock under the same terms.

2. Transactions with Affiliates

The Company carries its investments in two affiliated companies at cost. Both affiliated companies are in the initial year of marketing their principal services and neither has reached a level of profitable operations. These affiliates follow conservative accounting policies of not deferring development expenditures, but instead charge them to income as incurred. Accordingly, the Company's investment of $112,500, substantially exceeds the underlying equity value. In the opinion of management the cost of these investments fairly states the value of these long-term investments. Officers of the Company also hold interests in these companies. During the year ended June 30, 1970, revenue for materials delivered and services rendered to these affiliates by the Company totaled $22,002, and costs and expenses totalled $32,452 for materials received and services rendered to the Company by these affiliates.

3. Contingencies

The Company has commenced an action to collect an advance (which has been fully reserved) made by the Company pursuant to a proposed acquisition which was discontinued in 1969. A counterclaim in the amount of $100,000 has been filed in this action. In the opinion of counsel to the Company, the claim is bona fide and the counterclaim is without merit.

A claim, in the amount of $231,797, has been made against the Company by a former employee alleging a breach of an employment agreement. The Company has filed an answer and counterclaim in this action, commenced in 1967, denying any liability. Based on the information furnished by the Company, counsel to the Company believes there is a meritorious defense to this claim.

4. Fixed Assets

Fixed assets, stated at cost and depreciated over estimated useful lives using straight line and declining balance methods, are comprised as follows:

	Cost	Depreciation to June 30, 1970	Estimated useful life in years
Office furniture and equipment	$ 79,045	$27,988	2 to 10 years
Leasehold improvements	73,204	22,959	4 to 11 years
	$152,249	$50,947	

Leasehold improvements are being amortized over the life of the lease and options for renewal. The Company's lease on its principal offices expires in February, 1971, but is renewable, at the option of the Company, for three year periods in 1972, 1975 and 1978 at aggregate annual rentals of $60,000, $66,000 and $72,000, respectively.

Improvements and betterments are charged to fixed assets, and expenditures for maintenance, repairs and minor renewals are charged to operations. At the time assets are retired or sold, the cost and accumulated depreciation are removed from the accounts and the resulting gain or loss, if any, is reflected in operations.

5. Tax Loss Carry-Forwards

Unused tax loss carry-forwards of $1,470,000 are available to offset future taxable income and expire as follows:

June 30, 1973	$ 240,000
June 30, 1974	280,000
June 30, 1975	950,000
	$1,470,000

6. Shareholders' Equity

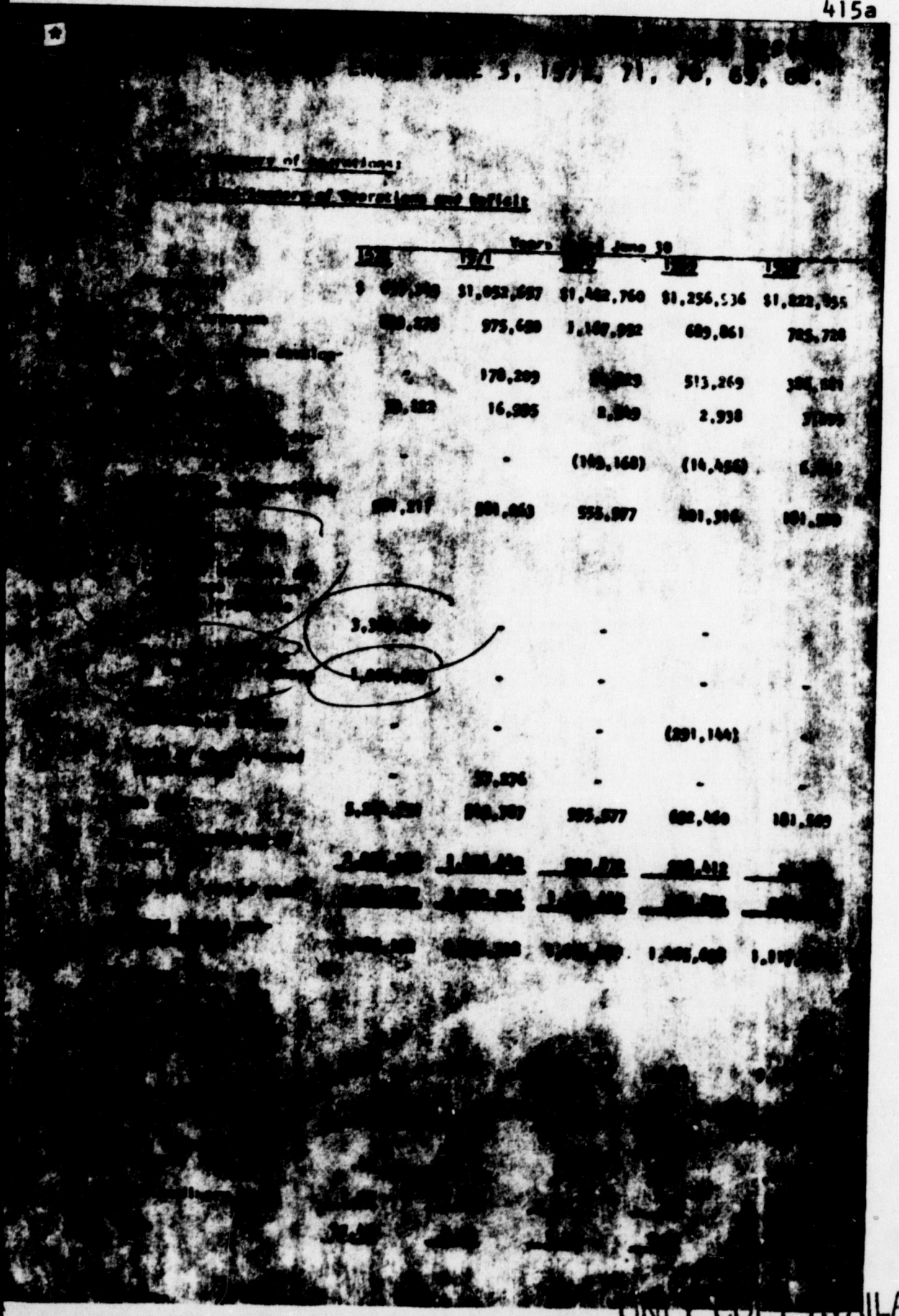
Under the Company's qualified stock option plan up to 600,000 shares of Class A common stock can be granted to officers and key employees at not less than 100% of the fair market value of the Company's stock at date of grant. During the year ended June 30, 1970, options for 29,000 shares were granted and options for 70,400 shares were cancelled due to termination of employment, etc. Options for 2,125 shares were exercised during the year and, at June 30, 1970, options for 61,900 shares were outstanding at prices ranging from $1.67 to $22.75 per share, of which options for 20,590 shares were exercisable. Options are exercisable in four and five cumulative equal annual installments.

At June 30, 1970, warrants were outstanding to purchase 30,000 shares of the Company's Class A common stock, at prices ranging from $2.17 to $2.75 per share to March 1, 1973, the expiration date of the warrants.

The Company has reserved 132,475 shares of Class A stock for future conversion privileges of Class B stock. Class B stock has six votes per share, and Class A stock has one vote for each share held.

Changes in shareholders' equity is summarized as follows:

	Common stock Class A	Common stock Class B	Capital in excess of par value	Accumulated deficit
Balance at June 30, 1969	$137,218	$15,448	$1,807,505	$ [illegible]
Conversion of Class B stock	2,200	(2,200)		
Options exercised	212		3,826	
Stock issued in connection with amendment to Scientific Literature Corporation acquisition agreement (note 1)	4,460		(4,460)	
Stock issued in connection with agreement with Excerpta Medica Foundation (note 1)	7,667		842,333	
Net loss for year ended June 30, 1970				[illegible]
Balance at June 30, 1970	$151,777	$13,248	[illegible]	[illegible]



ONLY COPY AVAILABLE

Item 1. Number of Equity Security Holders.

Title of Class	Approximate Number of Record Holders as of 12/1/69
Common Stock, Class A, $.10 Par Value	1,025
Common Stock, Class B, $.10 Par Value	1
Warrants to purchase Common Stock, Class A, $.10 Par Value	4

Item 2. Increases or Decreases in Outstanding Equity Securities.

As of June 30, 1969, there were 1,314,302 shares of the Registrant's Common Stock, Class a and 154,475 shares of the Registrant's Common Stock, Class B issued and outstanding, and warrants to purchase 30,000 shares of the company's Common Stock, Class A at prices ranging from $1.92 per share to $2.75 per share. The foregoing share amounts reflect a 3-for-1 stock split effective pursuant to shareholder approval given on December 23, 1968. With all share numbers being adjusted for the aforesaid stock split, the foregoing share amounts represent, since June 30, 1968, an increase of 258,152 shares of Common Stock, Class A issued and outstanding, a decrease of 31,000 shares of Common Stock, Class B issued and outstanding and no change in the number of warrants to purchase Common Stock, Class A issued and outstanding.

The increase of 258,152 shares of the Registrant's Common Stock, Class A issued and outstanding is comprised of the following:

(a) 68,400 shares issued on September 20, 1968 pursuant to an Agreement and Plan of Reorganization whereby T.N.S.B., Inc., a New Jersey corporation which is a wholly owned subsidiary of Registrant, acquired substantially all of the assets of Trenton-Nassau Service Bureau, Inc. A copy of said Agreement and Plan of

* EXCERPT FROM 3 I CO. FORM 10K FOR FISCAL YEAR JUNE 30, 1972

Name	State of Incorporation
Scientific Literature Corporation	Pennsylvania
*Excerpta Medica Information Systems, Inc.	Pennsylvania
*Information Company of America	Pennsylvania
American Micromation Industries, Inc.	Pennsylvania
E.O.C., Inc.	New York
Mauchly Wood Systems Corporation	Delaware

*Inactive

With the exception of E.O.C., Inc. and Mauchly Wood Systems Corporation, both of which were acquired subsequent to the end of the Registrant's fiscal year, the financial statements of the above subsidiaries of the Registrant (other than those which are inactive) have been included in the accompanying consolidated financial statements.

Item 5. Pending Legal Proceedings.

As of September 30, 1972, neither Registrant, nor any of its subsidiaries, was involved in any material pending legal proceedings.

Item 6. Increases and Decreases in Outstanding Equity Securities.

(a) As of June 30, 1972, there were 2,460,916 shares of Registrant's Common Stock, Class A (25,000 shares of Registrant's Common Stock, Class A are held as treasury stock and are not treated as outstanding) and no shares of Registrant's Common Stock, Class B issued and outstanding. In addition, warrants to purchase 103,000 shares of Registrant's Common Stock, Class A at prices ranging from $2.00 to $5.00 per share were outstanding. The foregoing share and warrant amounts represent, since June 30, 1971, an increase of 889,146 shares of Common Stock, Class A which are issued and

lied upon to support such exemption were previously reported in gistrant's Current Report on Form 8-K for the month of August, 72.

(iii) 7,500 shares issued on August 4, 1972 to Mr. ed Von Eugen pursuant to a letter agreement dated April 5, 1972, ich provided that Mr. Von Eugen was issued these shares in settle- nt of and in place of all rights he may have had against Registrant der letter agreements executed between the Registrant and Mr. n Eugen in 1969 and 1970. Those agreements granted Mr. Von gen, inter alia, the right to require the Registrant to repur- ase or register, during the fiscal year ended June 30, 1972, ,000 shares of the Registrant's Common Stock, Class A, which re issued to Mr. Von Eugen. The Registrant believes that the ares issued to Von Eugen, which were taken by him without a view distribution thereof, and were legended accordingly, did not volve a public offering, and therefore were exempt under section 2) of the Securities Act of 1933, as amended.

em 7. Approximate number of Equity Security Holders.

Title of Class	Approximate Number of Record Holders as of September 30, 1972
mmon Stock, Class A $.10 ar value	1900
mmon Stock, Class B $.10 ar value	None
arrants to purchase Common Stock, Class A	10

em 8. Executive Officers of the Registrant.

The following table indicates the names, ages and positions the executive officers of Registrant as of September 30, 1972.

PLTF IN EXH 132 10/30/73

3i Company | Information Interscience Incorporated
2101 Walnut Street, Philadelphia, Pennsylvania 19103 (215) 569-9717

November 18, 1970

To: Messrs. Nissan, Mulvihill, Dadonna, Boop, M. Brodsky, G. Brodsky

From: 3i Company/Information Interscience Incorporated

Re: Guaranty of $225,000 Loan from Chemical Bank New York Trust Company

Gentlemen:

This will confirm that 3i Company/Information Interscience Incorporated (3i) in return for your guaranty of the above referenced loan has agreed to issue to you warrants for an aggregate of 45,000 shares of 3i Common Stock, Class A in the following amounts:

Guarantors	Warrants for Common Stock
Nissan	10,000
Mulvihill	7,500
Dadonna	10,000
Boop	7,500
M. Brodsky	10,000
G. Brodsky	0

OCT 5, 1971

NO WGI

The warrants which will be issued in due course will be in substantially the same form and contain substantially the same conditions as contained in the presently outstanding warrants to purchase shares of 3i Common Stock, Class A. It is understood and agreed that investment covenants will be given in connection with the issuance of the warrants and the shares of stock issuable upon exercise of the warrants (and the warrants themselves) will be entitled to piggy-back registration rights only.

The term of the warrants will be for three years. The exercise price during the first nine months of the term will be $3.50 per share and the exercise price for the remainder of the term will be $4.50 per share.

No representations and warranties concerning the Company's financial statements, business operations or prospects have been or will be made in connection with the issuance of the warrants. Warrant holders will, however, be entitled to receive copies of the Company's Annual Report containing certified financial statements and copies of all other communications sent to 3i shareholders.

The arrangements between each of you as guarantors and the amounts (as between yourselves) you will be guaranteeing will be the subject of a separate agreement between yourselves to which 3i will not be a party.

3i Company/Information Interscience Incorporated
G. L. Brodsky

EXHIBIT I

*COVERING LETTER DATED SEPTEMBER 28, 1971 EGAN TO KENGLA TRANSMITTING BROWNSTEIN BULLETIN DATED SEPTEMBER 24, 1971

September 28, 1971

Mr. Louis R. Kengla
Louis R. Kengla Company
4708 Wisconsin Avenue, N.W.
Washington, D.C.

Dear Bud:

Attached is bulletin from Marine Midland on 3I Company and also release from a broker.

It is interesting to note that Marine Midland still thinks it is a good buy.

Sincerely,

EJE/mh
Att.

The statements contained herein are believed to be reliable, but are not guaranteed. The opinions expressed are subject to change

ITEM (17)

MARINE MIDLAND BANK
NEW YORK
250 PARK AVENUE • NEW YORK, N.Y. 10017

Edward J. Egans, Esq.
Edgan & Bliss
Room 508
250 Park Aveune
New York, New York 10017

* * * Q Mr. Nissan, the hour is getting late, we agreed to adjourn at 4 o'clock, I would like to spend a moment with you on some of these documents.here

I show you Plaintiff's Exhibit 37, it is a Marine Midland Investment Research Report.

A Yes.

Q How did you get it?

A I got a copy from the analyst who wrote the report.

Q What was his name?

A Gerald Brownstein.

Q How did you get it? Was it mailed to you or was it delivered to you?

A I think it was mailed. I don't remember. I honestly don't.

Q We will be talking about it later, I just want to identify this particular item.

I show you Plaintiff's Nissan Exhibit Nos. 33, 34, 35, and 36 and ask you, sir, how did you get those?

A I don't remember.

Q You don't remember?

A I don't know whether I was given them or received them in the mail.

Q But one way or the other it came from Mr. Brownstein?

BORAK REPORTING 150 NASSAU ST.

* MARINE MIDLAND ENVELOPE AND POSTMARK TO EGAN TRANSMITTING

423a

A Yes, sir.

MR. FELTON: Just a second, I would like to read No. 33, it is a bulletin dated June 8, 1971; No. 34 is a bulletin dated September 7, 1971; No. 35 is a bulletin dated August 10, 1971; and No. 36 is a bulletin dated March 10, 1971 with a stamp "confidential" on the righthand corner.

I reserve my rights to ask the questions, it is now 3:30.

MR. WINN: I don't want to stop you from asking questions, go ahead.

Q I would like to show you Plaintiff's Exhibit C marked for identification on October 16, 1973 and ask you, sir, if you ever saw this letter or a copy of it?

MR. KELLY: This is not produced from his documents?

MR. NELSON: No, this was produced by Joel Brownstein on direct testimony.

A I think I saw a copy of that in late '72 or -- I would say late '72.

Q Late 1972?

A Yes, sir.

Q What is the date of that document, sir?

A '71.

Q You never saw it in 1971, though? * * *

BORAK REPORTING 150 NASSAU ST.

424a

* * *

Q By the way, do you know or ever spoke to a Jack A. Dalziel Incorporated -- a Jack Dalziel or a Jack Dalziel Incorporated?

A Yes.

Q They are located in California?

A Yes.

Q Is Dalziel a client of yours?

A Recently.

Q Was it a client in 1971?

A No, sir.

Q By the way, this particular report which is May 17, 1971, which is Plaintiff's Exhibit 37, did you ever make copies of it?

A I made a few copies, yes.

Q What did you do with the copies? Who did you send them to?

A Strictly for informational purposes to sell my accounts.

Q What are the names of the people?

A I don't know. They already had positions, the Bank of Paris for one, I believe I gave it to the president of the bank.

Q The Bank of Paris?

A I don't remember.

* * *

BORAK REPORTING 150 NASSAU ST.

A

* * * Q Who mailed these reports for you?

A I don't know if they were mailed.

Q Or --

A I don't remember.

Q Do you know if any of them were mailed?

A May have been, I don't remember.

Q Did you personally mail any of these reports?

A I don't remember.

Q Did you give any of these reports to Miss Fichtenmayer or any other secretaries for you to mail?

A I don't remember.

Q Did you make copies of these bulletin, that is, Exhibits 33, 34, 35 and 36?

A I don't believe so.

Q No?

A No.

Q Aside from the reproducing that you testified, did you tell any of your customers about this report?

A I probably mentioned it, yes.

Q Did you tell them about it before or after you got the report?

A I don't remember. Certainly most of my purchases had been done before, you know, I had been recommending myself.

BORAK REPORTING 150 NASSAU ST.

I couldn't have told them much about it because I didn't know much about the report anyway.

Q No?

A No, sir.

Q What did you know about Mr. Brownstein?

A He was a securities analyst at the bank, Marine Midland Bank.

Q When did you first meet Mr. Brownstein?

A At a meeting arranged by Faherty & Schwartswood on a company called Seco.

Q What year was it?

A I believe sometime in the latter part of 1970, I don't remember the exact time.

Q And at that time at that meeting was Mr. Brodsky there?

A No, sir.

Q Were you ever at a place where you, Mr. Brownstein and Mr. Brodsky were together?

A Not that I -- wait a minute. There is an appointment, yes -- wait a minute.

MR. KELLY: Tell him the meeting where they might have been.

THE WITNESS: I don't remember the time frame. I remember that I think he and another * * *

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* * * Q How many conversations did you have in 1971 before you received this report?

A I would say numerous.

Q How many would you say?

A I can't remember. I was trying to recommend a lot of securities.

Q What other securities did you recommend to Mr. Brownstein?

MR. KELLY: Wait a minute, I object to that.

MR. RICHARD G. LYON: I join in that objection.

Q Did you ever see Mr. Brownstein personally after the meeting at Faherty & Schwartswood?

A Yes.

Q When was the first time you met him personally?

A At the meeting at Faherty & Schwartswood.

Q When was the next time you met him personally?

A Sometime after, I don't remember whether it was three months, six months, I don't remember. Not that frequently.

Q That would bring it up to when, the middle of 1971?

A Wait a minute, I said I don't remember; it was very infrequent and you are telling me --

Q The next one, the next meeting?

A I don't remember.

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Q You said three to six months, that would be sometime in 1971, correct?

A That would strictly be a yes.

Q Where did you meet him the second time?

A Either, I think I may have met him at my office once and another analyst introduced him to a company, or I may have gone up to the bank to meet various analysts at the bank.

Q That is when you saw him?

A Yes, sir.

Q How many times in all did he come to your place?

A I would guess once, but it could have been two, I don't remember exactly.

Q One or two times?

A Not that many.

Q One or two times, you say?

A I would guess so, yes.

Q When he came to see you one or two times, this was before the report of 1971?

A I don't remember if I met him before the report of 1971, other than that one time.

Q When was this?

A As I said, Faherty & Schwartswood and once at my

BORAK REPORTING 150 NASSAU ST.

office, but I do not recall other than that.

Q Just the one time at Faherty & Schwartswood and one time at your office?

A I may have gone up to the bank seeing various analysts talking about stock.

Q How many times was that?

A I don't recall. It was not frequent.

Q Did you ever see him any time after he received the report of which is Plaintiff's Nissan Exhibit No. 37?

A I believe -- yes, I did.

Q How many times?

A Well, I saw him the next time I think when the negative figures were issued.

Q When was that?

A When I went down on a Sunday morning to 3i in Philadelphia.

Q Was Mr. Brownstein there?

A Yes, sir, I invited him along.

Q So then you saw him one time in Faherty & Schwartswood and one time thereafter, and the third time was at the bank, when you saw the other analysts?

A Understanding that I am speaking from recollection.

Q Yes, of course. And the fourth time was down in Philadelphia?

A Yes.

Q And the second time you saw him was before, when he came over to the office, was before the report of May 1971?

MR. RICHARD G. LYON: That wasn't his testimony, Mr. Felton.

MR. FELTON: I withdraw the question.

Q Did you ever know that Mr. Brownstein had an account with Walston and Company?

A I don't think so.

Q Did you ever learn whether or not Mr. Brownstein ever purchased any 3i Co. stock?

A I didn't know other than the fact he mentioned he bought some.

Q When did he mention it?

A I don't remember.

Q On the telephone?

A Yes.

Q By the way, when he came one time personally to your office to see you, how long did he stay?

A I don't remember. As I say, I'm trying to recall. I think it was a meeting with the president of Sintronics or the president of 3i, I just don't remember.

Q Was this at your office?

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A Yes.

Q That is when you saw him the one time that he came by?

A Yes, sir, I believe so.

Q How long did he stay?

A It couldn't have been very long; there were other people in the meeting, I don't remember who, though; I know his analyst was with them, but other analysts from the bank was with him.

Q Who was that?

A Mr. Good.

Q What is his full name?

A I believe Cecil Good.

As I say, the time frame, I just don't remember.

Q Did he ever come down personally to see you at your office, just the two of you talking?

A Sometime thereafter he may have dropped in for a few minutes.

Q When was that?

A 1972.

Q How long did he stay when he came that one time, dropped in?

A Mostly very short period of time.

Q Did there ever come a time when you spoke to

* * *

BORAK REPORTING 150 NASSAU ST.

BORAK REPORTING 150 NASSAU ST.

* * * Q Even negative reports?

A Yes.

Q Did they review the September 24, 1970 report?

A I don't remember that.

Q I notice in your May 17, '71 report you refer to something in capitals, capital S and capital L. Supervised List. What does that mean? What is the Supervised List?

A The Supervised List, the list of securities that the bank holds.

Q Is it an actual list, typed up list?

A It is a list. I don't know how they prepare it.

Q But it is formal, obviously.

A Yes. It is a list.

Q Have you ever seen the list?

A Oh, sure.

Q How many pages was the average list in 1971?

A I don't know. It is a long list.

Q And is the list broken down into categories?

A Could you just define categories?

Q Well, for example, blue chip?

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A No.

Q

A No.

Q Just one list?

A It is a list.

Q And how is the list, then? Alphabetical?

A No. It is by industry classification.

Q By industries? And under industry it is alphabetical?

A I think so.

Q And what is there, a rating next to each stock that is on this list?

A I don't know.

Q A sentence of this report of May 17, 1971 begins, "The stock is being added to the Supervised List."

A Right.

Q The report is dated May 17, '71. Yet the last sentence states that the stock is being added to the Supervised List. Who adds to the Supervised List? What is the procedure for adding to the Supervised List?

A For adding a stock to the Supervised List?

Q Yes.

A It has to be approved by the investment policy committee.

Q Yet on the date that you prepared this report, on May 17, 1971, it hadn't been seen as yet, the report to the investment policy committee, correct?

MR. WILLIS: I object to that question.

Q Had it been seen on May 17, 1971, the date this report was dated?

A In what form?

Q Was it seen, was this report that I hold before me, Defendants' Exhibit 8, was it seen by the investment policy committee on May 17, 1971?

A I think so.

Q So they saw it before then, before the date of May 17, '71, is that your testimony now?

MR. WILLIS: I object. What do you mean is that his testimony now? You are suggesting that there is some change of testimony. I object to that.

A Could you ask it a different way?

Q On May 17, 1971?

A That is right.

Q Had it been seen, this report, as yet by the investment policy committee?

BORAK REPORTING 150 NASSAU ST.

BORAK REPORTING 150 NASSAU ST.

A I believe so.

Q In what form had it been seen?

A I don't remember.

Q The date on this report, was this the date this report was issued?

A It might have been. I don't know.

Q What do you mean in the last sentence "The stock is being added to the Supervised List." Are you suggesting in this last sentence that it had already been approved?

A Approved --

Q Being added to the Supervised List.

A That is correct.

Q Is it fair to say there it was another preliminary report that was approved by the investment policy committee which is the subject of this report?

A No.

Q On May 17, 1971 when you prepared this report you stated that this stock 3i Co. was being added to the Supervised List.

A Right.

Q To continue further in the sentence "as a Special Situation." What does that mean? When I say Special Situation I am reading from the last

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sentence.

A What do I mean by that?

Q It is your report.

A Special Situation is a highly speculative aggressive situation that is only for high risk accounts.

Q I'd like to call your attention to the previous sentence, "While the stock is speculative, we are recommending its purchase in those accounts which permit equities of above average risk." Are you now changing the report, sir, and suggesting it wasn't above average risk but high risk?

MR. WILLIS: I object, Mr. Felton. If you want to ask questions in that way, you are never going to accomplish anything but just taking time.

MR. FELTON: I am calling on him to answer the question.

MR. WILLIS: You are taking the time of the reporter and costing yourself a lot of money needlessly. We know what the report states.

MR. FELTON: Please don't testify for him. We have your comments. I want an answer to my question.

MR. WILLIS: Mr. Felton, I will continue

BORAK REPORTING 150 NASSAU ST.

until I am finished and you can take exception to it.

MR. FELTON: As long as your statements don't perhaps in any way indicate, perhaps, your displeasure with, perhaps, what might be the intended answer.

MR. WILLIS: Mr. Felton, Exhibit 8 has been marked and we know word for word what is in Exhibit 8. Mr. Brownstein answered your question. If you do not like his answer, that is part of the breaks of the game.

MR. FELTON: Sir, my understanding of the rules of federal procedure are such that when I have a witness here who is a defendant in this action, who has testified in contrary fashion, I am entitled to see if I can get an answer at this particular point.

MR. WILLIS: He has not testified in a contrary fashion. I object to your Statement on the record which is obviously contradictive of everything that has happened up to now.

Q I show you this report and I say to you, would you please look at the sentence before the end, sir.

A Yes.

Q Is it now your testimony that the stock, Special Situation, refers to a high risk stock or above the average risk stock?

MR. WILLIS: I object to the form of the question.

A Same thing.

Q It is the same thing?

A Yes.

Q To continue the last sentence, "and is rated as a Buy." What does that mean, with the capital b, Buy?

A With a capital b, it was to be bought on a discretion of account managers in those accounts willing to assume the risk.

MR. KUNEN: Will you read the answer?

(Whereupon the answer referred to above was read by the reporter.)

MR. WILLIS: Are you finished?

MR. FELTON: I haven't begun.

MR. WILLIS: Then let's get moving.

MR. FELTON: Off the record.

MR. WILLIS: It is on the record. Anything I say is on the record.

BORAK REPORTING 150 NASSAU ST.

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Q Before I believed you testified that the Supervised List offers securities that the bank holds or held.

A Yes.

Q I believe you just now said it is a Buy and referring to the entire sentence, "The stock is being added to the Supervised List as a Special Situation and is rated as a Buy." It is a Buy for those accounting managers who have those accounts willing to accept the risks?

A Yes.

Q So are you saying now that the Supervised List is both for the bank's own purchasing as well as for purchasing for the accounts of customers?

A I don't know if there is a distinction.

Q The bank itself owned stocks, right?

A I don't know.

Q You just said a moment ago, securities the bank held or holds.

A I think the question you are asking me is a question I can't answer because I don't understand the distinction between bank owning and bank holding.

Q I am talking about the Marine Midland Bank and its subsidiaries.

A Yes.

Q As far as portfolios are concerned. The bank and its subsidiaries have clients?

A Right.

Q Who have accounts?

A That is right.

Q And in the account there are portfolios, correct, different stock holdings?

A Yes.

Q But the bank itself and its subsidiaries own different securities not for the clients but for themselves, for the bank itself?

A I don't know.

Q Then is all your work done for purposes of purchasing and sales of clients' accounts in their portfolios?

A I don't know.

Q What types of accounts are there, let's say? For example, their discretionary accounts?

MR WILLIS: Mr. Felton, I think you should first establish that he had something to do with those accounts. Up until this point he has not indicated any familiarity with the subject matter.

Q Referring now to the accounts managed as

BORAK REPORTING 150 NASSAU ST.

you testified, and those accounts willing to accept the risks.

A Right, okay.

Q That which you testified to, what types of accounts are those?

A I don't know. I told you I am a security analyst.

Q That is not the point. You do know the list Special Situations applies to those accounts where the account is willing to accept the risk, right?

A I know that there are accounts and I know that in each account there is probably risk and non-risk situations. Going beyond that I don't know because I am not involved in that type of work.

Q Do you know that there is a need for distinction based upon the different type of account, correct?

MR. WILLIS: I don't understand that question, Mr. Felton.

MR. FELTON: I will go into it.

Q If you don't understand a question, I will be glad to explain. Let's continue this way.

A Go ahead.

Q There are certain accounts you say where the managers know that those accounts are willing to

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BORAK REPORTING 150 NASSAU ST.

accept the risks.

A Okay.

Q And those accounts are the ones where you have Special Situations, correct?

A No.

Q Tell me then.

A Okay. I don't know what accounts are for risk and I don't know what accounts are for non-risk. I just know that there are those accounts, whatever they are, whatever their description, whatever their distinction, that probably accept risk situations.

Q And that is where you have, you said, Special Situations for them?

A That is presumably what they are earmarked for.

Q What do you mean by managers? Are those managers in the individual branches? You said before managers of those accounts.

A I don't know. I don't know what the system is.

Q When you use the word managers, what do you mean?

A People that manage accounts.

Q Portfolio men?

A Yes.

Q And they are in the individual units of

BORAK REPORTING 150 NASSAU ST.

the individual banks?

A Yes.

Q And those portfolio men, are they in contact with the clients?

A I don't know.

Q Are copies of your reports sent to those portfolio men or managers?

A Yes.

MR. WILLIS: You were referring, I take it, to a report such as Exhibit 8?

MR. FELTON: Yes.

MR. WILLIS: Not necessarily everything that he writes --

MR. FELTON: I am specifically talking about Exhibit 8.

A That report (indicating)?

Q Yes.

A Yes.

Q And did you ever have occasion, for example, on this report or any other report for some of those portfolio men to call you up and discuss it with you?

A Yes.

Q And at that time maybe you would tell

them a little more of the information you have and maybe explain a certain part perhaps that they don't understand in the report?

A Explain the report basically.

Q How often is this Supervised List published?

A I don't know.

Q How often was it revised?

A That I don't know either.

Q In other words, as the situation changed in any particular stock --.

A I don't know what procedure the bank chooses to do that.

Q The Investment Policy Committe, you mean?

A No, I am saying the bank

Q When did 3i go on the list, in May of '71, the Supervised List?

A It might have been May or it might have been June, I don't know.

Q I would like you to refer to the last sentence of your report. Perhaps it would refresh your recollection.

A Yes, I see that. But when it was added, I don't know.

Q It might have been May, it might have been

* * *

BORAK REPORTING 150 NASSAU ST.

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* * *of May 17, 1971?

A Yes.

Q Did you look at the annual 10-K for the year 1970 as part of your preparation of the May 17, 1971 report?

A No.

Q You did not?

A I didn't see the 10-K.

Q So what did you use -- I believe you said you didn't see the 1969 10-K or 1970 10-K, correct?

A Yes.

Q So what did you use for purposes of preparation of the report of May 17, 1971 besides the annual report?

A Conversations with Mr. Brodsky.

Q And Mr. Nissan?

A Let me finish the answer.

Q I am sorry.

A The materials that you see, chats with other security analysts. It was a normal procedure, chats with Mr. Nissan, the normal procedure, you know, that I go through when I look at a company.

Q I don't want to know the normal procedure. I want to know specifically.

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A This was a normal procedure.

Q Fine. You said the annual reports, the chats with Mr. Nissan and chats with Mr. Brodsky, that is Gerald Brodsky?

A Yes.

Q And chats with other analysts?

A Yes. And whatever other information I could get.

Q What were the names of the other analysts you had chats with as part of your preparation of the May 17, 1971 report?

A Frankly, I don't remember.

Q You don't remember at all?

A No.

Q Do you remember speaking to anyone besides Mr. Nissan or Mr. Gerald Brodsky outside of any members of the Marine Midland family about 3I Co. before you prepared the report of May 17, 1971?

A Sure, I must have had chats -- specifically, I am sure that is your next question, I don't know who they were.

Q If you don't remember who they were, what was the nature of the chats with the security analysts prior to May 17, 1971?

BORAK REPORTING 150 NASSAU ST.

A Just a chat about the company.

Q Did you call them?

A I don't remember that.

Q Did they call you?

A Probably not.

Q Then you made the phone call, right?

A Apparently I must have made the phone call.

Q Were there any personal visits to any of those security analysts?

A I don't remember that.

Q And at the time that you made the conversations, the phone calls to those analysts, did you tell them that you were preparing a report?

A I don't remember. If I did make phone calls --

Q If you did make phone calls?

A I don't remember at all.

Q When was the first time you met Mr. Brodsky personally?

A Personally? It was a meeting that was held.

Q Was that the Halston & Co. meeting that you were talking about?

A Yes.

Q Was that the first time you met him?

A Yes.

* * *

BORAK REPORTING 150 NASSAU ST.

A This was a normal procedure.

Q Fine. You said the annual reports, the chats with Mr. Nissan and chats with Mr. Brodsky, that is Gerald Brodsky?

A Yes.

Q And chats with other analysts?

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Q Was that the first time you met him?

A Yes.

* * *

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*** against you?

MR. WILLIS: He didn't say people were in the corner with everyone against him.

Q Didn't you say that?

A I said it was never that type of situation.

Q Did you ever see Mr. Nissan again after the Walston & Co. meeting at any time from that time to date?

A Oh, sure.

Q What was the next time you saw Mr. Nissan?

A I don't remember the date.

Q What were the circumstances of it?

A It might have been a meeting. It might have been a casual meeting in the street, I don't remember what it was.

Q Was there any time after the second meeting that there was a pre-arranged meeting between yourself and Mr. Nissan?

A Pre-arranged?

Q In other words, was it by appointment, was there a meeting?

A I don't remember that.

Q That you ever had that you met with Mr.

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Nissan from the time of that Walston & Co. meeting up until today?

A Today?

Q Up until today.

A Pre-arranged meeting?

Q Yes.

A I would sometimes drop by his office.

Q I see. When was the first time you dropped by his office?

(Discussion off the record.)

A When was the first time? The date?

Q Yes.

A I don't remember the date.

Q Was it before you met him at that Walston & Co. meeting when you talked to Mr. Brodsky?

A No, it was afterwards.

Q Afterwards?

A Yes.

Q How many times did you drop up to his office?

A I honestly don't remember.

Q Was it more than ten times?

A I don't remember the exact number.

Q I am not asking for the exact. I am

BORAK REPORTING 150 NASSAU ST.

asking was it more than ten times?

A I can't even give you an estimate.

Q Was it more than ten times?

A I can't give you an estimate.

Q Was it less than ten times?

A I said I can't even give you an estimate, Mr. Felton, because I don't know.

Q Were there any times that you dropped up to his office before the May 17, 1971 report?

A Yes.

Q And when you dropped up to see him at his office was this during office hours?

A Yes.

Q And when you dropped up to see him before May 17, 1971 of his office, did you discuss 3i Co. with him?

A Yes.

Q And did Mr. Nissan tell you facts about 3i Co.?

A Nothing that I already didn't know.

Q What did you discuss the first time you dropped off at his office?

A Probably the state of the market.

Q Were you an investor in the market then?

BORAK REPORTING 150 NASSAU ST.

A Was I investing in the market?

MR. WILLIS: He was a security analyst.

Q Were you investing in the market personally?

A At what specific point?

Q When you say you discussed the market with him, had you had any stocks that you owned at that time?

A I might have.

Q Did you?

A I don't remember.

Q Did you ever own 3i Co. stock?

A Oh, yes.

Q When did you first buy it?

A It was, I think, a week to ten days after my report came out.

Q September 24, 1970 report? The September 24, 1970 report?

A No.

Q When was the first time you bought 3i Co. stock?

A I am telling you, I think it was -- I am sorry. I didn't make the distinction, the second report.

Q The second report?

BORAK REPORTING 150 NASSAU ST.

BORAK REPORTING 150 NASSAU ST.

A Yes.

Q The first time you ever owned 31 stock was in May of 1971?

A I don't know whether it was May. But it was after that report was out.

Q Whom do you trade with, sir?

A Who do I trade with?

Q Who was your broker?

A Who was my broker?

Q Who was your broker at the time?

A It was Walston.

Q And who was your broker, Mr. Nissan?

A No.

Q Who was your broker?

A I don't remember who it was.

Q You don't remember who your registered representative was?

A No.

Q How long had you had an account at Walston & Co.?

A Two years, maybe.

Q What years, from when to when?

A I don't remember. I had it a while.

Q Did you have an account with Walston

in 1970?

A Yes.

Q And you had an account in 1971 with Walston & Co.?

A Yes.

Q Did you have an account in 1972 with Walston & Co.?

A Yes.

Q Do you have an account with Walston & Co. now?

A Yes.

Q In 1970 did you have an account with any other brokerage firm other than Walston & Co.?

A I might have.

Q With whom?

A I don't remember who it was.

Q Will you search your records?

A Sure.

Q And tell me whoever you had an account with.

A Sure.

Q From 1967 to date?

A Sure.

Q Are you married, sir?

* * *

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* * *

AFTERNOON SESSION

(Time: 2:00 P.M.)

JOEL S. BROWNSTEIN, having been previously duly sworn, resumed the stand and testified further as follows:

EXAMINATION (Cont'd.)

BY MR. FELTON:

Q During the times that you visited Walston & Co. and spoke to Mr. Nissan in early 1971 did you at any time while you were there see your own registered representative whose name you don't recall at this time?

A I don't remember.

Q When you went up to see Mr. Nissan I believe you said it was during office hours?

A Right. Yes.

Q Did you ever see Mr. Nissan outside of the office in early 1971 before the report of May 17,'71?

A Probably.

Q Where did you see him?

A I might have met him at a meeting or I might have met him on the street and maybe got a lift uptown.

Q He drove you uptown?

A Yes.

BORAK REPORTING 150 NASSAU ST.

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Q With his car?

A Yes.

Q Where did you meet him to get in his car, at his place of business or nearby?

A Yes.

Q Did he bring you uptown quite a bit?

A No.

Q But enough to remember, correct?.

A Yes.

Q Did you ever visit with him at his home?

A No.

Q Did you ever have him come to your home for a visit?

A No.

Q Did you ever have coffee with him, or any type of refreshment from early 1971?

A No.

Q Did you ever go out to a restaurant or a bar with him?

A I don't remember.

Q You don't remember?

A No.

Q It could have been?

A I don't remember, really.

* * *

BORAK REPORTING 150 NASSAU ST.

jd43

correctness of as to the transaction.

A Yes.

Q Now, do you consider that the description of the transaction in the report of May 17, '71 is the same as the description of the transaction on the original report of September 24, 1970?

MR. WILLIS: I object to the form. What is said in each of them speaks for themselves, as you have said previously.

MR. FELTON: What's in each of them is Mr. Brownstein's report. And I am asking Mr. Brownstein now to compare them and see if they are materially the same.

(Witness examining documents.)

A No.

Q Different?

A They are different.

Q What's different about them?

A Well, I see 2.6 million, that's $200,000 per year until 2.6 million is reached, it is just a distinction that's not made, here.

Q What about the right to begin repurchasing shares, is that in the original report?

A Fixed prices.

BORAK REPORTING 150 NASSAU ST.
Rjd44

Q Is that in the original report?

A No.

Q What do you mean by that sentence,"the company's right to begin repurchasing"? Are you suggesting that 3i had the right to repurchase at fixed prices?

A Yes.

Q When you made your note on B-39 about 46,000 shares, and $300,000, and cash bracketed $15 a share, didn't you realize at that point that that was not the same as what was in your report of September 24, 1970?

A I don't remember.

Q Would you read September 24, 1970 and then read your notes on B-39, please, and compare them.

A September 24, 1970, number one,"Excerpta Medica - provides 3i with most sophisticated and extensive source of biomedical information in the world. In 1969 Excerpta gave 3i an exclusive licensing agreement for 15 years in return for 46,666 shares of 3i stock then valued at one million dollars."

Q At that point 46,666 shares then valued at one million dollars, the statement given to you by Mr. Brodsky, but now you have a note in your files, as part of your work sheet for May 17, 1971, where there is 46,000 shares plus $300,000 in cash. Didn't that start

BORAK REPORTING 150 NASSAU ST.

jd45

the wheels turning for you to do further investigation of this matter, sir?

A I don't remember.

Q Did you ever do investigation when you saw the note was entirely different in your original report of September 24, 1970?

A No.

Q I would like you to refer you to notes to consolidated financial statement, the annual report, B-26, sir, and ask you to read the paragraph beginning "September 1969."

A Should I read it out loud, the whole paragraph?

Q Yes.

A "In September 1969 the company entered into an agreement, subsequently amended in June 1970, with Excerpta Medica Foundation, a foreign non-profit corporation, for the exclusive right within the United States to market information services from Excerpta's data bank and biomedical information. The consideration for this right is a million dollar, including 46,666 shares of Class A common stock issued in October 1969 which the company can be required to purchase at $15 per share" --

Q Stop at that moment, sir. Is that what you mean on Page B-39 where you say "46,000 shares at $15 a share

BORAK REPORTING 150 NASSAU ST.

A I don't know.

Q All right, continue to read.

A "$15 per share in October 1971, and 30,000 shares of Class A common stock to be issued on December 1st, 1970 which the company can be required to purchase at $5 per share in July 1971."

Q Is that the end of the sentence?

A Yes.

Q Now, where does the 30,000 shares come from?

MR. KUNEN: In connection with what?

MR. FELTON: In connection with the one million dollars valuation for the data bank license.

MR. WILLIS: This is not his financial statement.

MR. FELTON: I am asking him if he knows anything about 30,000 shares.

MR. WILLIS: If you are asking him whether he knows --

A No.

Q You don't know anything about it at all?

A No.

Q I believe when you were reading through the pages of B-27 through B-40, you said the information was similar to the information given to you by Mr. Brodsky?

A Yes.

Q And some of the information by Mr. Nissan?

A I believe so.

Q Do you know which is which?

A No.

Q You have no dates then when Mr. Brodsky gave you the information except the one page where you have a date, April 20?

A April '71.

Q Do you have any dates when Mr. Nissan gave you the information that you had on these papers?

A Specifically, no.

Q Did you consider the Excerpta Medica data bank license as an important asset to 3i?

A Yes.

Q You did?

A Yes.

Q Yet you didn't read the notes to the consolidated statement in 1970 regarding them?

MR. KUNEN: He already testified as to that.

A No.

Q I believe you mentioned the name Peter Warren. You knew him? * * *

BORAK REPORTING 150 NASSAU ST.

BORAK REPORTING 150 NASSAU ST.

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A I don't know what you mean.

MR. WILLIS: You are asking him an accounting question.

A I don't know what you mean by qualified.

Q What do you consider the words in the report, "In our opinion, subject to the realization of carrying value of data bank licenses..." means?

MR. WILLIS: I object to the form of the question.

Q What is your understanding of that, or do you have an opinion?

A I have no opinion.

Q No opinion?

A No.

Q The next sentence on Page 5 of your report of May 17, '71 says, "The one million dollars paid for this agreement" -- that's the Excerpta Medica agreement -- "will be written off over a 40-year period."

A Right.

Q With the exception of that one reference to it in your notes which was information given to you by Mr. Brodsky or Mr. Nissan, is there any verification of the statement that you have in your records?

A No.

BORAK REPORTING 150 NASSAU ST.

(A brief recess was taken and the deposition resumed.)

BY MR. FELTON:

Q During the time that you had your conversation with Mr.Nissan prior to May 17, 1971, did you at any time inform him of the fact that you were preparing a report on 3i Co.?

A I might have.

Q When might you have done it, what time of the year of '71?

A I wouldn't know, wouldn't remember that.

Q Would it be before March of '71?

A I couldn't give you a date because I don't remember.

Q Did you inform Mr. Brodsky as well that you were preparing a report prior to May 17, '71?

A Again, I might have. But I don't remember the date.

Q Now, in your report of May 17, '71 -- strike that. Who else did you inform outside of 3i Co. that you were preparing a report in May '71? Strike that question.

Who else outside of Mr. Nissan and Mr. Brodsky and members of your Marine Midland Bank family did you inform that you were preparing a report prior to the

* * *

BORAK REPORTING 150 NASSAU ST.

* * *

MR. WILLIS: I object. He said he doesn't remember.

A I don't remember.

Q Do you know Mr. Martin Falk?

A At one time.

Q When did you first meet him?

A I believe he was the institutional rep for the Marine Midland bank for some brokerage house.

Q When did you first meet him?

A I don't remember.

Q Prior to May 17, 1971?

A It might have been.

Q Did he work for Goldman Sachs & Co.?

A I think so.

Q When you say "institution rep" for Marine Midland Bank, what does that mean?

A Well, from the bank's point of view. He represented Goldman Sachs on the buy and sell side for all of the banks, and he did business, I presume, with all of the banks as again representing Goldman Sachs.

Q Do you recall the first time you met him?

A No, I don't.

Q Did you ever discuss Si with him?

A I don't remember.

BORAK REPORTING 150 NASSAU ST.

Q You don't?

A No.

Q Sir, did you give Mr. Falk a copy of the May 17, '71 report?

A I don't remember.

Q You might have?

A I don't remember.

MR. WILLIS: Objection. He said he didn't remember.

Q Did you ever meet Mr. Falk at the beach, Atlantic Beach, during the summer of 1971?

A I may have.

Q Did you discuss 3i with him then?

A I don't remember.

Q At the time you met Mr. Falk had you already purchased 3i stock?

A Myself?

Q Yes.

A Again, I don't remember.

Q By the way, how much time was it really that you actually took to prepare the report? In other words, when you had decided on the report, how long a time had you worked on it before you had the rough final copy? A couple of months?

* * *

BORAK REPORTING 150 NASSAU ST.

* * * Q Did you follow the stock after the report of May 17, '71 to date?

A To now?

Q Yes.

A I followed the stock then.

Q Mr. Winn informed me that 3i Co. wrote a letter of repudiation of your report; did you receive that letter?

MR. WILLIS: I object to the form of the question. If you have a letter you want to ask him about, ask him but don't testify.

Q Did you receive any letter from the 3i Co. as to your report?

A Yes.

Q When?

A I think it was sometime in --the actual receipt of that was in either June or July of that year.

Q Do you have a copy of that?

MR. WILLIS: We have produced it this morning.

A It was in my file. Show me my file.

Q Surely.

(Witness examining document.)

MR. WILLIS: I have the letter I think

BORAK REPORTING 150 NASSAU ST.

you are referring to, Mr. Felton, it is dated June 23, 1971.

MR. FELTON: Mark this as Plaintiff's Exhibit C for identification.

(Letter dated June 23, 1971 to Mr. Joel Brownstein marked Plaintiff's Exhibit C for identification, this date.)

Q Did you ever reply to this letter?

A Yes.

Q Do you have a copy of your reply?

A Well, it was a verbal reply.

Q What did you say?

A Well, I --

Q Withdrawn. Did you keep any notes of your verbal reply?

A No.

Q What do you recall of what your reply was to the letter?

A Just I was stunned by the letter. I tried to reach Mr. Brodsky for three weeks, maybe a month after. He did not return my phone call. When he finally did it was a long distance call. I remember he was in California. And I was, you know, upset about that letter. I said, "Well, what about the letter?" He said, well, the

BORAK REPORTING 150 NASSAU ST.

attorneys suggested that he do that, but to forget about it, don't show it to anybody and throw it away.

Q When you got the letter did you call him the same day that you received it?

A I most certainly did.

Q When you weren't able to get -- withdrawn.

Did you speak to anyone on the investment policy committee about the letter? Strike that.

Who did you speak to on the investment policy committee about the letter?

MR. WILLIS: He hasn't testified he talked to anybody.

Q Did you speak to anybody on the investment policy committee about the letter?

A At the time that I received it? No.

Q Did you speak to anybody in Marine Midland Bank about the letter?

A I don't remember.

Q When is the first time you spoke to anybody, if at all, in the Marine Midland Bank about the letter?

MR. WILLIS: He said he didn't remember.

MR. FELTON: I said anyone at any time.

A I don't remember.

Q Did you ever speak to anybody at all about

BORAK REPORTING 150 NASSAU ST.

this letter?

A I am sure I did but I don't remember when.

Q When is the first time you spoke to anyone?

A I said I don't remember.

Q Was it before or after you spoke to Mr. Brodsky?

A Again, I don't remember when.

Q Did you ever speak to Mr. Nissan about this letter?

A I don't remember.

Q When I say "ever," I mean from the time you received it to today, did you ever speak to Mr. Nissan about it?

A I don't remember.

Q Did you ever write another report on this stock after you received the letter?

A You have it, yes.

Q After you received this letter did you ever write another report on the stock?

A No, not a report.

MR. WILLIS: All right.

Q Where was this contained, this letter; is this part of your personal files or is it part of the records of the company, Marine Midland Banks?

BORAK REPORTING 150 NASSAU ST.

A It is a letter that, you know, I showed somebody at some point, so it was --

MR. WILLIS: We haven't made a big distinction whether these are from his files or the bank's files, they are not all that different and these were in the files.

Q They are in the same place?

A Yes.

(A brief recess was taken and the deposition resumed.)

MR. WILLIS: Let the record indicate that I have possession for the moment of Plaintiff's Exhibits A, B and C.

MR. FELTON: Correct. And that you are going to give me copies of them so you can get back the originals for your record.

We will resume tomorrow at 9:30.

(Whereupon, at 4:10 P.M., the deposition adjourned as above set forth.)

Subscribed and sworn to before me this _____ day of _____, 1973.

* * *

BORAK REPORTING 150 NASSAU ST.

* * * yesterday. I will be glad to put it in the record. I am sure I will be getting a summons a half hour from now, after the meter expires. I didn't want to spend the time looking for a garage.

MR. WILLIS: I don't think a law violator is a good representative for a class representative.

MR. FELTON: I am not a law violator. I pay my summonses promptly. If you consider a person willing to accept a summons for purposes of speeding along an exam is a law violator, I don't think we understand each other.

MR. WILLIS: Move along.

MR. FELTON: I would like to move along and ask where is Exhibit C, Plaintiff's Exhibit C.

MR. WILLIS: All the exhibits are in the folder. Exhibit C was the last one marked. I would suggest it would be at the end.

MR. FELTON: Thank you.

BY MR. FELTON:

Q I believe you told us yesterday that when you received this letter you were stunned.

A Right.

Q I also believe you said that you would try to get a hold of Mr. Brodsky and were unable to reach

BORAK REPORTING 150 NASSAU ST.

him for three or four weeks.

A That is right.

Q I believe you also said for the third or fourth week period of time you had not discussed this with the other employees at the bank.

A That is right.

Q I think you also said during the three or four-week period you had discussed this with Mr. Nissan.

MR. WILLIS: I object to that. You didn't ask him that and I don't recall the answer.

Q Let me ask you this. Did you speak to Mr. Nissan in this three or four-week period?

A Yes.

Q What did you say to Mr. Nissan and what did he say to you?

A About what?

Q About the letter.

A I don't remember whether I discussed that with him or not.

Q But you remember speaking to him in the three or four-week period?

A Yes.

Q Do you recall the first conversation you had with Mr. Brodsky?

A Yes. The first conversation in reference to that letter?

Q Yes.

A Yes.

Q And by the way, how did he receive the report, your report?

A I don't know.

Q Did you send it to him?

A I don't remember whether I did or not.

Q You have been answering a lot of questions that you don't remember, as you did yesterday, and you answered it this way to this particular point. I don't remember but I refer you to this letter in which he addressed the letter to you, Mr. Joel Brownstein, "Dear Joel," and the beginning of the first paragraph:

"I received the report which you have prepared on the prospects of the 31 Co."

When you spoke to him did you ask him where he got the report?

A That I don't remember.

Q You don't remember? Did he tell you where he got the report?

A I don't remember that either.

Q Read it further. * * *

BCRAK REPORTING 150 NASSAU ST.

BORAK REPORTING 150 NASSAU ST.

* * * we can follow it.

MR. FELTON: I am referring to Exhibit C, the letter I have before me, the letter from Mr. Brodsky to Mr. Brownstein.

A I am going to answer that question now.

Q Was it circulated within the bank.

A Yes, it was.

Q How was it circulated within the bank?

A The reports are printed up and distributed to the account managers,

Q Where are they printed up?

A I don't know.

Q Those account managers are in the various units of the bank?

A Yes.

Q In the various unit subsidiaries?

Reading further from Exhibit C:

"I see that the report contains earnings projections and other reported financial information which is in error."

What did you say to him about that particular sentence?

A I questioned him about why he made a statement like that. If he said that, you know, the information

BORAK REPORTING 150 NASSAU ST.

contained in the report generally was -- there were no problems with it, and I told him that.

Q What?

MR. WILLIS: Let him finish his answer, Mr. Felton.

A There were no problems with the information but those were my own projections based on the conversations that I had with him and based on what I knew of the company and what I had read.

This was, of course, the main point of contention.

Q Did you question the figures that he gave you in your conversation with him?

A Did I question the figures that he gave me?

Q Yes.

A He didn't give me any figures over the telephone at this particular point. He was just saying that the financial information, you know, he questioned my projections.

Q Just your projections?

A Yes.

Q And everything else he agreed with?

A Yes. There was no contention about anything else.

Q Just the earnings projections. All right. Did you discuss the source that you used, the material,

BORAK REPORTING 150 NASSAU ST.

with him in the phone conversation?

A I don't remember whether we discussed that at all.

Q Did you discuss Mr. Nissan in that phone call in any way?

A I don't remember that.

Q You don't remember that either?

A No.

Q How long a conversation was it?

A It was a long conversation but, again, to be specific, I can't -- I don't know, I don't remember, you know, the length of time. I just remember it was a long conversation that I had with him.

Q Did you ever speak to Mr. Brodsky again?

A After that conversation?

Q Yes.

A I believe so, but to be specific, I couldn't give you a date. I believe I did speak to him once more.

Q One more time?

A One more time.

Q By telephone?

A By telephone.

Q By the way, this conversation you had with Mr. Brodsky, the one that you just told us about, after you received this letter, was this the next

* * *

* * *

MR. WILLIS: The answer was with respect to the dates he purchased and the dates he sold he said he doesn't remember. I am trying to cooperate by saying we will endeavor to give you the exact dates.

A _____

_____

_____

_____

Q Did you know when you were speaking to Mr. Brodsky at any time prior to May 17, 1971 that Mr. Brodsky was the major stockholder in 31 Co.?

A I think so, yes.

Q He was also the president of the company?

A President of the company.

Q And also the board of directors?

A Yes.

Q Did you know, being a major stockholder, how many shares Mr. Brodsky owned?

A Specifically I don't think so. I don't know. I didn't know the total amount. I know he had a big chunk of stock.

Q Right. And did you also know that there were about a million and a half shares of common stock and about half of them were closely held, half of those

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BORAK REPORTING 150 NASSAU ST.

* * * he got Exhibit C?

Q After you got Exhibit C was the first time you spoke to somebody in the bank about this letter, right?

MR. WILLIS: I object. You have not asked him whether he talked to anybody else in the bank about the letter.

MR. FELTON: All right.

Q You have already testified up to the time you spoke to Mr. Brodsky you did not speak to anybody in the bank about the letter, correct?

A That is correct.

Q Did you ever speak to anybody in the bank about this letter?

A Yes.

Q Whom did you speak to?

A I believe it was my boss.

Q Mr. Messner?

A No, Mr. Foss.

Q Mr. Foss? What is his first name, again?

A Richard.

Q Richard. And when you spoke to him about the letter, did you show him the letter?

A Yes.

BORAK REPORTING 150 NASSAU ST.

Q Do you recall how long after you spoke to Mr. Brodsky you spoke to Mr. Foss about the letter and showed him the letter?

A It was a couple of months.

Q Later?

A Yes.

Q Some time in September? The letter is dated June 23 and I believe you said you spoke to Mr. Brodsky --

A Approximately a month.

Q In September?

A No, no. I spoke to him --

Q Approximately a month. That would be some time in the middle of July, July 23, and you say a couple of months after, some time after September 20?

A No, it might have been in October.

Q In October?

A Yes.

Q And that is October of 1971?

A That is correct.

Q And when you spoke to Mr. Foss in October of 1971 what was the price of 31?

A I don't know.

Q You don't remember? * * *

BORAK REPORTING 150 NASSAU ST.

*** A I just told you I would only be guessing. You can probably get that from The Wall Street Journal.

Q I just want your recall, sir. From the time you spoke to Mr. Brodsky to the time you spoke to Mr. Foss, do you know if the stock -- let's say the time you spoke to Mr. Brodsky and the time you first spoke to Mr. Foss, do you know if the price of the 3i stock went up, went down or stayed reasonably at the same price?

A I think it went down. It was down. I remember, I think it was in October. It was down after they reported their results.

Q So when you spoke to Mr. Foss it was after 3i reported its results?

A Right.

Q What did you say to Mr. Foss when you first spoke to him in October?

A I told him what the situation was.

Q What did you tell him?

A I told him about, you know, the company reported results that were not in line with my projection and that -- I showed him the letter. I really didn't know at the time what went wrong because Mr. Brodsky was unavailable and that was it.

Q And what did Mr. Foss tell you?

A I don't remember what his reply was.

Q The gist of it.

A It was just a discussion of it, you know the company, and that is about all that I can recall.

Q How long a conversation did you have with Mr. Foss?

A It was not a long one but I would only be guessing if I gave you the time frame.

Q During this conversation did he say to you to continue to follow 31 Co.?

A I don't think that was discussed. I was following it at the time.

Q You mentioned yesterday that you were following approximately 20 to 40 companies. After you spoke to Mr. Foss did you continue to follow 31 Co. as one of the companies that you were following?

A I continued for a while and then another fellow in our organization took over the supervision of the --

Q Of 31?

A 31.

Q When did you turn over the job of following 31 to this other fellow?

A I don't remember that.

Q Was it in 1971? * * *

BORAK REPORTING 150 NASSAU ST.

*** few questions and answers.

(Record read.)

Q Did you find the report?

A This is the 1971 annual report?

Q The annual report.

A Yes.

Q What were the earnings per share for the year 1971?

A There was an operating loss of 35 cents.

Q How do you compare that to your projection for a 40 cent profit for the year?

MR. WILLIS: This is just arguing, Mr. Felton. Just ask for facts and move on.

Q I would like to ask you this. Your report is dated May 17, 1971?

A Yes.

Q And this was a fiscal year ended June 30, 1971?

A Yes.

Q So this report was six weeks before the end of the fiscal year, is that correct?

A Approximately.

Q According to your report, is it correct that this was the first year of anticipated profitability by you? * * *

*** Q Did you ever recommend the sale if 3i? When I say that, I mean 3i Co. stock?

A No.

Q Did you ever ride home with Mr. Nissan after the May 17, 1971 report tc date?

A No.

Q Did you ever see Mr. Nissan personally at any time after the May 17, 1971 report to date?

A Yes.

Q How many times did you see him after May 17, 1971?

A I don't know.

Q A number of times?

A I don't know how many times.

Q How many times did you see him the first month after May 17, 1971?

A I don't know.

Q Did you see him between May 17, 1971 and June 23, 1971?

A I don't remember. I might have.

Q Did you see him between June 23, 1971 and October 23, 1971?

A I might have, yes.

Q During that time you were talking to him

* * *

*** A Yes.

Q I snow you bulletins that come along. I just noticed there is another bulletin dated June 8, 1971. Before I renew my question I would like that marked for identification.

(The above referred to bulletin was marked Plaintiff's Exhibit K for identification as of this date.)

Q Now referring to Plaintiff's Exhibit K, June 8, 1971, this is a bulletin of 31 Co./Information Interscience Inc. I would like to read it for the record and I ask you if this is your statement.

MR. WILLIS: Off the record.

(Discussion off the record.)

Q This particular bulletin refers to the agreement in principle to acquire stock, Information Company of America, is that correct?

A Yes.

Q In this bulletin you said, "Since we last recommended 31 on May 17, 1971, the stock has risen dramatically in anticipation of a good third quarter." Is that your statement?

A Yes.

Q Did you further say, "We have not changed

SORAK REPORTING 150 NASSAU ST.

BORAK REPORTING 150 NASSAU ST.

our opinion" and without finishing that sentence, to go to the next, "However we strongly urge that all remaining buying intentions be finalized as soon as possible."

A Yes.

Q What did you mean by the statement you haven't changed your opinion as to the stock and that you strongly urge that all remaining buying intentions be finalized as soon as possible when you wrote this on June 8, 1971?

A Simply that the bank should finish taking their position.

Q The report which is Defendants' Exhibit 8 was dated May 17, 1971, right?

A Yes.

Q And on June 8, 1971 you issued a bulletin announcing the acquisition or at least the agreement in principle to acquire Information Company of America?

A Right.

Q That is something subsequent, a subsequent event of importance to amplify the original report which was not on the original report because it was newly stated information, is that correct?

MR. LYON: Is that a question?

MR. FELTON: Yes.

Q Is that so?

A The June 8 bulletin?

Q Yes, new information.

A New information.

Q Okay, of significance to the portfolio men in the bank.

A Of significance.

Q Pardon?

A Just of general significance.

Q All right. And on August 10 your bulletin, reading the first sentence, "We regard the depressed level of 31 as an excellent buying opportunity to keep the portfolio men abreast of your thinking on this particular stock," is that correct, as of August 10, 1971?

A Whatever I wrote there.

Q And on September 14, 1971 -- by the way, previous to June 8 was Plaintiff's Exhibit K and the August 10 which I previously referred to in questions is Plaintiff's Exhibit H for identification, on September 24, '71, Plaintiff's Exhibit I for identification, your bulletin concerned a release

of 31 Company, a press release of 31 Co. as to World Book contracts, is that correct?

MR. WILLIS: The document speaks for itself.

Q In which you said that it is still Special Situation-Buy, correct?

A Yes.

Q You learned of information of importance to the portfolio men, right, Mr. Brownstein?

A Yes.

Q On October 20, 1971 there is a bulletin written, you advised that among other things, that Gerald Brodsky has been removed as President and that the company is considering changing its name to Information Company of America and a statement by Mr. Brodsky, press release of some type or a letter attached, is that correct?

A Yes.

Q New information since the report of May 17, 1971?

A That is right.

MR. FELTON: I would like this marked for identification. It is a bulletin dated October 22, 1971.

(The above referred to document was marked Plaintiff's Exhibit L for identification as of this date.)

Q It is also from you, Mr. Brownstein, in which you enclose a news release dated October 18, 1971 from 31 Co. is that correct?

A Right.

Q Basically bulletins covering new information learned after the report of May 17, 1971, is that right, Mr. Brownstein?

A Referring to the ones you just referred to?

Q Yes.

A Yes.

Q Is there a bulletin covering Mr. Brodsky's letter to you?

A No.

Q Did you ever prepare a bulletin with the copy of Mr. Brodsky's letter?

A No.

Q When you discussed Mr. Brodsky's letter with Mr. Foss and any other employees of Marine Midland Banks, was a bulletin prepared at any time from that time to date concerning Mr. Brodsky's letter?

A No.

* * *

SUPPLEMENTARY AFFIDAVIT OF ROBERT R. FELTON IN SUPPORT OF PLAINTIFFS RULE 23 MOTION (Filed November 15,1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON	
Plaintiff	73 Civ. 2200 DBB
- against -	SUPPLEMENTARY AFFIDAVIT
WALSTON AND CO., INC., et al.	
Defendants	

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

ROBERT R. FELTON, being duly sworn, deposes and says:

I submit this supplementary affidavit to my moving affidavit in support of plaintiffs' Rule 23 motion.

A motion to amend the complaint and to join Edward J. Egan, Esq. as a co-plaintiff herein is before this Court. Mr. Egan has retained me as his attorney.

Mr. Egan's affidavit detailing the facts and circumstances surrounding his claim is annexed hereto.

I respectfully request that Mr. Egan's affidavit be included in support of plaintiffs' Rule 23 motion.

Robert R. Felton
ROBERT R. FELTON

Sworn to before me
this 12th day of November, 1973.

Leona D. MacFarlane

LEONA D. MacFARLANE
Notary Public, State of New York
No. 30-7619650
Qualified in Nassau County
Term Expires March 30, 1974

COMPLAINT (Filed November 29, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON and
EDWARD J. EGAN

Plaintiffs

- against -

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANKS, INC., MARINE MIDLAND BANK - WESTERN, MARINE MIDLAND BANK - NEW YORK, MARINE MIDLAND BANK - ROCHESTER, MARINE MIDLAND BANK - CENTRAL, MARINE MIDLAND BANK - SOUTHERN, MARINE MIDLAND BANK OF SOUTHEASTERN NEW YORK, N.A., MARINE MIDLAND BANK - NORTHERN, MARINE MIDLAND BANK - EASTERN NATIONAL ASSOCIATION, MARINE MIDLAND BANK - CHAUTAQUA, NATIONAL ASSOCIATION, MARINE MIDLAND TINKER NATIONAL BANK, DREYFUS - MARINE MIDLAND, INC., JOEL BROWNSTEIN, 3 I CO./INFORMATION INTERSCIENCE, INC., GERALD L. BRODSKY, MAURICE BRODSKY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), MEDISCHE REFERATAN (EXCERPTA MEDICA) N.V., INFONET (EXCERPTA MEDICA - RESCONA) N.V., ELTRAC (INFONET) N.V., PETER WARREN, MAIN LAFRENTZ AND CO., FRED VON EUGEN, S. KIM KESSLER and GERALDINE KESSLER

Defendants

CLASS ACTION
AMENDED COMPLAINT

Plaintiffs Demand
Trial By Jury

73 Civ. 2200
(DBB)

Plaintiffs, on behalf of themselves and all other purchasers of the securities of defendant 3 I Co./Information Interscience, Inc. during the period December 10, 1970 through October 24, 1972, for their Amended Complaint pursuant to the Order of Honorable Dudley Bonsal dated November 19, 1973, complaining of the defendants herein, upon information and belief, allege:

JURISDICTION AND VENUE

1. Defendants have, by use of instrumentalities of interstate commerce and the United States mails, engaged in acts, practices and courses of conduct which constitute violations of

Sections 10(b) and 20 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C., 78j(b) and 78t and Rule 10b-5 promulgated thereunder, the statutory law of the State of New York and principles of common law.

2. Jurisdiction is based on (a) Section 27 of the Exchange Act and (b) pendent jurisdiction.

3. The acts and transactions complained of herein occurred in substantial part within the Southern District of New York and offerings of securities involved herein have been made to plaintiffs and the class in the said Southern District. Defendant 3 I Co./Information Interscience, Inc. was and still is a publicly held business corporation with securities traded in the over the counter market by brokerage concerns mainly within the Southern District of New York. Defendant Walston and Co., Inc. maintains brokerage offices within the Southern District. Defendants Marine Midland Banks, Inc. and Marine Midland Bank - New York maintain offices within the Southern District.

4. The matter in controversy exceeds the sum of $10,000.00, exclusive of interests and costs. This action is not instituted to confer jurisdiction on this Court which it would not otherwise have.

5. Defendants carried out the acts and practices hereinafter set forth by the use, means and instrumentalities of interstate commerce and the mails.

CLASS ACTION

6. Plaintiffs bring this action individually and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a Class, consisting of those persons and

business organizations who purchased securities of defendant 3 I Co. /Information Intersceince, Inc. (hereinafter referred to as "3 I Co.") during the period December 10, 1970 through October 24, 1972 and were damaged by the acts hereinafter alleged.

7. Plaintiffs estimate that the Class is in excess of 8,000 members and that joinder of all members is impractical.

8. Plaintiffs are knowledgeable persons and plaintiffs will insure adequate representation of the interests of all purchasers and holders of securities of defendant 3 I Co. Their interests are coincidental with the interests of all members of the Class and they will fairly and adequately protect the interests of all absent members of the Class. They have no interests which are adverse to any members of the Class.

9. A Class action is superior to any other method available for fair and efficient adjudication of the controversy. It would be impossible to manage all possible actions or attempt to intervene into this action all damaged class members. Plaintiffs know of no difficulty likely to be encountered in management of this Class action. A single Class action can determine the rights of all class members with a maximum of judicial economy.

10. Prosecution of separate actions by individual class members would create risk of inconsistent or varying adjudications with respect to various class members.

11. There are common questions of fact and law common to the Class.

12. The questions of law and fact common to the members of the Class predominate over any questions affecting individual members.

THE PARTIES

13. Plaintiff Robert R. Felton has been both a purchaser and a seller of common stock, Class A, issued by defendant 3 I Co. and is at present a holder of 2,000 shares. Plaintiff Edward J. Egan was the purchaser of 200 shares of 3 I Co. common stock, Class A.

14. Defendant 3 I Co./Information Interscience, Inc. (hereinafter referred to as "3 I Co."), at times herein mentioned, a publicly held Pennsylvania business corporation, issued securities known as common stock, Class A, which were sold to the public in the over the counter market.

15. Defendant Walston and Co., Inc. (hereinafter referred to as "Walston"), a Delaware corporation, engaged in the stock brokerage business in the State of New York, at times herein mentioned, was a dealer and made a market in 3 I Co. common stock.

16. Defendant James Nissan (hereinafter referred to as "Nissan"), a registered representative licensed to purchase and sell securities upon the exchanges and over the counter and a Vice President of Walston, at times herein mentioned, was a 3 I Co. stockholder, a 3 I Co. creditor and a co-guarantor of 3 I Co. bank loans.

17. Defendant Marine Midland Banks, Inc. and its subsidiaries Marine Midland Bank - Western, Marine Midland Bank - New York, Marine Midland Bank - Rochester, Marine Midland Bank - Central, Marine Midland Bank - Southern, Marine Midland Bank of Southeastern New York, N.A., Marine Midland Bank - Northern, Marine Midland Bank - Eastern National Association, Marine Midland Bank - Chautaqua, National Association and Marine Midland Tinker National Bank (hereinafter collectively referred to as "Marine Midland") at times herein mentioned were banks duly organized and

existing under the laws of New York State. Marine Midland traded in 3 I Co. common stock and was a 3 I Co. creditor.

18. Defendant Dreyfus - Marine Midland, Inc. (hereinafter referred to as "Dreyfus") at times herein mentioned, was a partially-owned Marine Midland subisidiary engaged in managing institutional accounts, pension funds and profit sharing funds. Dreyfus traded in 3 I Co. common stock.

19. Defendant Joel Brownstein (hereinafter referred to as "Brownstein") at times herein mentioned was a securities analyst in Marine Midland's employ and during the course of his employment, Brownstein wrote Reports on 3 I Co. on September 24, 1970 and May 17, 1971 and Bulletins on 3 I Co. on June 8, 1971, August 10, 1971, September 7, 1971, September 24, 1971, October 20, 1971 and October 22, 1971. Brownstein traded in 3 I Co. common stock.

20. Defendant Gerald L. Brodsky (hereinafter referred to as "Brodsky") at times herein mentioned and until December 20, 1971 was the chief 3 I Co. Officer and Director. Brodsky was the major 3 I Co. stockholder and was referred in SEC reports as the "parent" of 3 I Co. Brodsky periodically converted large blocks of restricted 3 I Co. common stock into common stock, Class A, for sale on the open market.

21. Defendant Maurice Brodsky (hereinafter referred to as "Maurice") was defendant Brodsky's brother and was a 3 I Co. stockholder and warrant holder prior to October 13, 1971. Maurice was also the president and a major stockholder of American Micromation Industries, Inc. On October 13, 1971, 3 I Co. purchased a worthless 71% interest in this said corporation with 3 I Co.

common stock valued at $605,000.

22. Defendants Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher were officers, directors and shareholders of Information Company of America, I.C.A. and Information Corporation of America on June 30, 1971 when 3 I Co. purchased all the assets of these worthless corporations with 3 I Co. common stock valued at $3,053,857. On or about September 1, 1971, Arthur W. Elias became President and Director of 3 I Co., Marvin S. Riesenbach became Vice President, Treasurer and a Director of 3 I Co. and Marvin Schiller and Irving H. Sher became Vice Presidnets of 3 I Co.

23. Defendants Stichting Excerpta Medica (Excerpta Medica Foundation) and its subsidiaries, Medische Referatan (Excerpta Medica) N.V., Infonet (Excerpta Medica - Rescona) N.V. and Eltrac (Infonet) N.V. (hereinafter collectively referred to as "Excerpta Medica") at times herein mentioned were Netherland corporations, doing business in the United States of America. On September 19, 1969, Excerpta Medica agreed to sell a worthless data bank license to 3 I Co. for 46,666 shares of 3 I Co. restricted, legended stock.

24. Defendant Fred Von Eugen (hereinafter referred to as "Von Eugen") was a business broker involved in securing the aforesaid Excerpta Medica data bank license agreement. 3 I Co. agreed to pay Von Eugen the total sum of $300,000, of which $150,000 was paid on September 19, 1969 with $150,000 balance to be paid Von Eugen on April 27, 1970. 3 I Co. never paid this balance to Von Eugen prior to the end of its fiscal year ended June 30, 1970.

25. Defendant Peter Warren (hereinafter referred to as "Warren") at times herein mentioned was an employee and a Director of Excerpta Medica, and was designated as Excerpta Medica's attorney-in-fact and agent under the aforesaid agreement of September 19, 1969. Warren was elected a Director of 3 I Co.

26. Defendant Main Lafrentz and Co. (hereinafter referred to as "Lafrentz") at times herein mentioned was a partnership engaged in the practice of public accounting.

27. Defendants S. Kim Kessler and Geraldine Kessler (hereinafter together referred to as "Kessler") owned a substantial interest in Scientific Literature Consultants, Inc. which by agreement was merged into Scientific Literature Corporation, a subsidiary of 3 I Co. The Kesslers were employed to manage this 3 I Co. subsidiary. On November 2, 1970, 3 I Co. amended this agreement thereby releasing 3 I Co. shares held in escrow and issuing additional 3 I Co. shares to Scientific Literature Consultants, Inc. stockholders.

COUNT I

(Against defendants 3 I Co., Brodsky, Excerpta Medica, Warren, Von Eugen, Kessler, Maurice, Elias, Riesenbach, Schiller, Sher, Brownstein, Nissan, Marine Midland, Dreyfus and Walston)

28. These aforesaid defendants in a common scheme and a common course of fraudulent action to wilfully, directly and indirectly, defraud and deceive plaintiffs and the Class by causing, creating and permitting material representations that they knew or should have known were untrue, false, deceptive and inflated, and misleading statements with omissions of material facts, to present a false and inflated present and future financial picture

of 3 I Co. and a false and misleading picture of 3 I Co. as an expanding company making major viable acquisitions, to the investing public, including plaintiffs and the Class, for the sole purpose of artificially substantially inflating the market price and causing public demand for otherwise worthless 3 I Co. common stock, and to enable these defendants to sell and dispose of their 3 I Co. stock at fraudulently inflated prices, did conspire and scheme in the following common course of fraudulent action:

(a) Defendants 3 I Co. and Brodsky conspired and schemed with defendants Excerpta Medica, Warren and Von Eugen to materially enhance the financial statements of 3 I Co. by the use of a worthless data bank license deceptively stated as an asset equivalent to 62% of the entire 3 I Co. balance sheet assets. These defendants conspired and schemed to deceptively utilize inflated restricted stock, overstated as $1,000,000 as the cost of this license. Although defendants' agreements provided for repurchase of this stock by 3 I Co. at stated prices and stated dates, no repurchases were ever made and defendants Excerpta Medica and Von Eugen never sued to require repurchasing. The real intent of these defendants was evidenced in the 1972 3 I Co. 10 K report filed with the Securities and Exchange Commission wherein this stock was characterized as terminated stock rights.

(b) Defendants 3 I Co. and Brodsky conspired and schemed with defendant Von Eugen to materially understate current liabilities by $150,000 on the 3 I Co. balance sheet for fiscal year 1970.

(c) Defendants 3 I Co. and Brodsky conspired and schemed with defendants Kessler to improperly amend their agree-

ment so as to release 12,800 3 I Co. shares out of escrow and to issue an additional 44,800 3 I Co. shares to Scientific Literature Consultants shareholders, of which defendants Kessler owned a substantial interest. These defendants conspired and schemed, aided and abetted by defendant Lafrentz, to justify their amendment by falsely stating that a 3 I Co. subsidiary, Scientific Literature Corporation, had attained the necessary profitability, when in fact this subsidiary had sustained a net earnings loss for fiscal year 1970.

(d) Defendants 3 I Co. and Brodsky conspired and schemed with defendant Maurice to falsely and deceptively declare to the investing public that 3 I Co.'s purchase of a remaining interest in American Micromation Industries, Inc. was a major viable acquisition. These defendants did not act at arms-length for their purchase negotiations and thus 3 I Co. paid $505,729 for worthless intangible assets.

(e) Defendants 3 I Co. and Brodsky conspired and schemed with defendants Arthur Elias, Marvin Riesenbach, Marvin Schiller and Irving Sher to falsely and deceptively declare to the investing public that 3 I Co.'s purchase of all the assets of Information Company of America, I.C.A. and Information Corporation of America was a major viable acquisition. These defendants did not act at arms-length for their purchase negotiations and thus 3 I Co. paid $2,960,904 for worthless intangible assets.

(f) Defendants 3 I Co. and Brodsky conspired and schemed with defendants Brownstein and Nissan, and with the knowledge, assistance and connivance of defendants Marine Midland, Dreyfus and Walston and their officers and employees, to present and permit each other to present to the investing public, including plaintiffs and the Class, a false and inflated present and future financial picture of 3 I Co. and a false and misleading picture of

3 I Co. as an expanding company making major viable acquisitions. In furtherance and execution of their aforesaid scheme and course of action, these defendants individually and by their officers and employees, issued, disseminated and circulated to the investing public, including plaintiffs and the members of the Class, Brownstein's false, fraudulent and deceptive Reports and Bulletins, which:

(1) Deceptively and falsely detailed the financial terms of the aforesaid Excerpta Medica data bank license agreements.

(2) Deceptively understated the 3 I Co. loss of earnings for fiscal year 1970.

(3) Deceptively grossly over-estimated unfounded 3 I Co. earnings for fiscal year 1971.

(4) Deceptively grossly over-estimated unfounded 3 I Co. earnings for fiscal year 1972.

(5) Deceptively stated a P/E (profit-earnings) ratio for 3 I Co. common stock.

(6) Fraudulently continued to recommend the financial prospects of 3 I Co. despite Brownstein's receipt of Brodsky's letter of disavowal and error dated June 23, 1971. Although Brownstein had the duty to communicate in his Bulletins the adverse information contained in Brodsky's letter, Brownstein failed to do so and Brownstein continued to induce the purchase of 3 I Co. stock.

29. These defendants conspired with 3 I Co. and Brodsky to perform the aforesaid fraudulent and deceptive acts and approved, authorized and/or acquiesced in the fraud perpetrated upon plaintiff and the Class and/or otherwise aided and abetted

defendants 3 I Co. and Brodsky to commit said fraudulent and deceptive acts.

30. As the result of the aforesaid common scheme and common course of fraudulent action of these defendants, which initially reached the investing public with the filing of defendant 3 I Co. 1970 Annual Report on December 10, 1970, the market price of the otherwise worthless 3 I Co. common stock was caused to have a substantial artificial price increase, and plaintiffs and the Class were induced to purchase this stock without any knowledge of these defendants' fraudulent actions. Plaintiffs and the Class did not learn the untruths, omissions and aforesaid actions of defendants until after defendant 3 I Co. filed its 1972 Annual 10 K Report on October 24, 1972.

31. Plaintiffs and the Class sustained substantial losses as the result of the foregoing in the amount of $15.000.000.

COUNT II

(Against defendants 3 I Co., Brodsky and Lafrentz)

32. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs "1" through "31" inclusive with the same force and effect as if hereinafter fully set forth.

33. During their audit of 3 I Co. financial records and their examination of 3 I Co. financial statements for fiscal year 1970, defendant Lafrentz received and reviewed the Excerpta Medica agreements, Von Eugen agreements and Scientific Literature Consultants' agreements. Lafrentz knew, or should have known, that had they followed generally accepted accounting principles that 3 I Co.'s financial statements were incorrect, false and misleading in that its assets had been substantially overstated and inflated,

that its current liabilities had been substantially understated, that stock issued and capital in excess of par value had been substantially overstated and that there was no financial basis for the Scientific Literature Consultants amended agreement. Nevertheless, Lafrentz issued its Certificate (Report) and its Notes to 3 I Co. Consolidated Financial Statements for fiscal year 1970 wherein Lafrentz in violation of its duties and responsibilities as independent certified public accountants failed to notify and warn the investing public of the aforesaid facts, thereby aiding and abetting defendants in their aforesaid fraudulent and deceptive actions.

34. Defendants 3 I Co. and Brodsky and defendant Lafrentz, in furtherance and execution of defendants' aforesaid common scheme and common course of fraudulent action, issued, disseminated and circulated to the investing public, including plaintiffs and the Class, 3 I Co.'s 1970 Annual Report containing Lafrentz' Certificate (Report) and its Notes to 3 I Co. Consolidated Financial Statements, which contained untrue statements of material facts and omissions of material facts necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, in that aforesaid Certificate (Report) and its aforesaid Notes:

(a) Failed to disclose that 3 I Co. had materially understated its current liabilities by $150,000.

(b) Failed to disclose that 3 I Co. materially overstated the issuance of common stock, Class A and capital in excess of par value by $150,000.

(c) Misrepresented the terms of the Excerpta Medica data bank license agreement and failed to disclose

Von Eugen's role as a business broker.

(d) Failed to disclose that 3 I Co. assets had been materially overstated and inflated as $1,000,000 by the inclusion of the data bank license stated at cost, whereas in fact defendants had deceptively utilized inflated restricted stock in their transaction.

(e) Failed to disclose that 3 I Co.'s subsidiary, Scientific Literature Corporation had sustained a net earnings loss for fiscal year, and that accordingly there was no basis for 3 I Co.'s opinion that its subsidiary would achieve the necessary earnings to support the amended agreement.

JUDGEMENT

WHEREFORE, plaintiffs and the Class demands judgement against defendants, as follows:

(a) that this action be declared as maintained as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure;

(b) that defendants be adjudged jointly and severally liable to plaintiffs and the plaintiff class for compensatory damages in the amount of $15,000,000 and, in addition, punitive damages.

(c) that plaintiffs be awarded costs and reasonable counsel's fees,

together with such other and further relief as to this Court shall appear just and equitable.

Robert R. Felton

ROBERT R. FELTON
Attorney for Plaintiffs
42 Third Avenue
Mineola, New York 11501
516-746-5711

MEMO ENDORSED ON COMPLAINT
(Dated December 3, 1973)

LEAVE TO FILE THIS AMENDED COMPLAINT IS GRANTED.

IT IS SO ORDERED.

DECEMBER 3, 1973

s/ Dudly B. Bonsal
U.S.D.J.

U.S. DISTRICT COURT
FILED
DECEMBER 4, 1973
S.D. of N.Y.

NOTICE OF MOTION BY MAIN LAFRENTZ AND CO. DISMISSING AMENDED COMPLAINT AND FOR SUMMARY JUDGMENT (Filed December 13, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

73 Civ. 2200 DBB

NOTICE OF MOTION

12/31/73

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Milton Kunen, sworn to the 12th day of December, 1973, and the previously filed affidavits of Milton Kunen and Frank G. Warburton, both sworn to the 1st day of November, 1973, and the previously filed affidavit of Milton Kunen sworn to the 9th day of November, 1973, and upon all prior proceedings heretofore had herein, the undersigned will move this Court at Room 128 , United States Courthouse, Foley Square, New York, New York, on the 31st day of December , 1973, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an Order pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure dismissing the newest amended complaint herein against Main Lafrentz & Co. for failing to allege fraud with sufficient particularity and/or the undersigned will renew its motion for an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary judgment to the defendant Main Lafrentz & Co. on the ground that there is no genuine issue as to any material fact and that

the defendant Main Lafrentz & Co. is entitled to judgment as a matter of law, and for such other and further relief as to the Court may seem just and proper.

Dated: December 12, 1973

Yours, etc.,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

By _____
A Member of the Firm

Attorneys for Defendant
Main Lafrentz & Co.
425 Park Avenue
New York, New York 10022
(212) PL 9-8400

TO:

ROBERT R. FELTON, ESQ.
Attorney for Plaintiff
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Mineola, New York 11501

BREED ABBOTT & MORGAN, ESQS.
Attorneys for Defendants
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3I Co./Information Interscience, Inc.
261 Madison Avenue
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Marine Midland Bank and Joel Brownstein
48 Wall Street
New York, New York 10005

SHEA GOULD CLIMENKO & KRAMER, ESQS.
Attorneys for Defendants Medische
Referatan (Excerpta Medica) N.V.,
Infonet (Excerpta Medica - Rescona)
N.V. and Eltrac (Infonet) N.V.
330 Madison Avenue
New York, New York 10017

ANDERSON RUSSELL & KILL, ESQS.
Attorneys for Defendants
Reisenbach and Elias
600 Fifth Avenue
New York, New York 10020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

ROBERT R. FELTON, :

Plaintiff, :

-against- : 73 Civ. 2200 DBB

WALSTON AND CO., INC., et al., :

Defendants. :

- -x

AFFIDAVIT IN SUPPORT OF MAIN LAFRENTZ' MOTION TO DISMISS AND/OR MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

MILTON KUNEN, being duly sworn, deposes and says:

1. I am a member of the firm of Kaye, Scholer, Fierman, Hays & Handler, attorneys for defendant Main Lafrentz & Company ("Main Lafrentz"). I make this affidavit in support of Main Lafrentz' motion to dismiss the complaint for failure to allege fraud with specificity or, alternatively, in renewal of Main Lafrentz' motion for summary judgment originally returnable on November 12, 1973. The full facts regarding the transactions referred to in the amended complaint are set forth in my moving affidavit, sworn to on November 1, 1973 (hereinafter "Moving Affidavit") and in my reply affidavit, sworn to November 9, 1973 (hereinafter "Reply Affidavit"). These affidavits, which are incorporated herein and made a part hereof, will not be repeated here. The newest complaint adds nothing to the previous amended complaint, although it does contain significant omissions; this affidavit will be limited to the salient points raised in the newest amended complaint.

2. The newest amended complaint contains only one count against Main Lafrentz, set forth in paragraphs 32 through 34. The allegations are most general in nature -- for instance, that Main Lafrentz had not followed "generally accepted accounting principles", but the nature of the principles allegedly not followed is nowhere expressed. The only allegations expressed with even the barest specificity is the newest amended complaint are those referred to in subparagraphs (a) through (e) of paragraph 34. However, to the extent that these are specific, they are made specific solely by the fact that the newest amended complaint ignores the public facts of record. Certainly, by ignoring the public facts plaintiffs cannot meet the requirements that fraud be alleged with specificity as required by Rule 9(b) of the Federal Rules of Civil Procedure.

Paragraph 34(a)

3. Paragraph 34(a) of the newest amended complaint charges that the 1970 financial statements contained in the 1970 annual report of 3I Co./Information Interscience Inc. ("3I") "failed to disclose that 3I Co. had materially understated its current liabilities by $150,000." No specific allegation is made concerning what this alleged understatement consists of, and, therefore, the subparagraph does not meet the pleading requirements of Rule 9(b). However, from the previous complaints, as well as the affidavit in opposition to Main Lafrentz' motion for summary judgment, it appears that the claim is that the 3I financial statement of June 30, 1970 failed to carry a supposed obligation of 3I to pay $150,000 to Fred Von Eugen, the finder in

connection with 3I's acquisition of a data bank license from Excerpta Medica Foundation ("Excerpta Medica"). However, the newest amended complaint overlooks the following facts, admittedly in plaintiffs' possession:

(a) The obligation to pay $150,000 to Von Eugen 180 days after the acquisition of the data bank license, contained in a letter agreement dated September 19, 1969 between Von Eugen and 3I (Ex. 2)* was superseded by an obligation to issue 30,000 shares to Von Eugen on December 1, 1970 contained in an amended agreement dated June 15, 1970 (Ex. 3). The June 15 amended agreement, the terms of which are referred to in note 1 to the 3I financial statement, specifically states:

> "This will confirm our understanding that the second installment of $150,000 which was to have been paid to you on or about April 27, 1970 pursuant to the Letter Agreement is not due and payable to you...." (emphasis added)

Because the obligation to pay the additional $150,000 to Von Eugen had been superseded by the amendment dated June 15, that obligation no longer existed on June 30. Therefore, that obligation was not, and could not have been, shown as a current obligation on June 30. Indeed, as pointed out in my Moving Affidavit (¶26(a)), Felton finally had to admit at his deposition that the June 30 balance sheet could not have carried this superseded obligation to pay $150,000 in cash as a current obligation.

(b) As stated in the Reply Affidavit (¶2(d)), the obligation to issue the 30,000 shares to Von Eugen on December 1, 1970, which obligation superseded the previous obligation to pay him an additional $150,000, was fully accounted

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*Exhibits herein refer to the separately-bound exhibits submitted in connection with the Moving Affidavit.

for by reflecting those shares as outstanding as of June 30, 1970. Thus, the superseding liability to Von Eugen was expressed as if it had been a completed act, thereby fully carrying the liability. In addition, the balance sheet dated June 30, 1970 (Ex. 5), stated in note 1 that:

> "The shares to be issued on December 1, 1970 have been reflected as outstanding in the accompanying financial statements."

Thus, the obligation to Von Eugen (which was then an obligation to issue him 30,000 shares on December 1, 1970) was fully accounted for in the 1970 financial statements, and the method of accounting was fully disclosed in the notes. Thus, there can be no creditable argument made that the 3I balance sheet understated its current liabilities as of June 30, 1970.

Paragraph 34(b)

4. Paragraph 34(b) of the newest amended complaint charges that the 1970 financial statement "failed to disclose that 3I Co. materially overstated the issuance of common stock, Class A and capital in excess of par value by $150,000. Again, the newest amended complaint fails to comply with Rule 9(b) in that it does not explain the manner in which it is claimed that there was an alleged overstatement. However, relying again upon the previous complaints and the affidavit in opposition to Main Lafrentz' summary judgment motion, it appears that the claim is that note 6 to the 1969 financial statement (Ex. 5) overstated by $150,000 the stock issued in connection with the acquisition of the data bank license. This allegation is similarly based on the refusal to recognize that the obligation to Von Eugen to pay him an

additional $[illegible] in cash was superseded by an obligation to issue 30,000 shares of stock to him on December 1. In addition, the newest amended complaint simply ignores the notes in the financial statement upon which the claim against Main Lafrentz is based. Note 6 to the financial statements showed a total of $850,000 in stock as "Stock issued in connection with the agreement with Excerpta Medica Foundation (note 1)." Of this $850,000, $150,000 was the value of the 30,000 shares to be issued to Von Eugen on December 1, 1970.

5. Note 1 to the financial statements, referred to in note 6, clearly stated that part of the consideration for the acquisition of the data bank license was "30,000 shares of Class A Common Stock to be issued on December 1, 1970 which the Company can be required to purchase at $5.00 share in July 1971." (emphasis added) Thus, the note clearly stated that the stock had not yet been issued. However, as quoted above, note 1 further stated that the shares to be issued on December 1, 1970 were reflected as outstanding in the financial statement. As a result, any interested reader knew that the shares set forth in note 6 as "Stock issued in connection with the agreement with Excerpta Medica Foundation (note 1)" included the 30,000 shares to be issued on December 1, 1970, which shares had not yet been issued, but which were being reflected as outstanding on the balance sheet date.

6. In other words, the claim of an overstatement of the issuance of common stock, class A in the amount of $150,000 is based solely on the purposeful ignoring of the full disclosure -- including the disclosure that the 30,000 shares were not yet issued but were being carried as if

issued on June 30, 1970 -- in the very balance sheet challenged in the newest amended complaint.

Paragraph 34(c)

7. Paragraph 34(c) of the newest amended complaint alleges that the 1970 financial statements "misrepresented the terms of the Excerpta Medica data bank license agreement and failed to disclose Von Eugen's role as a business broker." The manner in which the terms of the Excerpta Medica data bank license were allegedly "misrepresented" is nowhere set forth. Therefore, this allegation woefully fails to comply even colorably with the requirement that fraud be alleged with specificity.

8. It may be that paragraph 34(c) of the newest amended complaint seeks to allege that the financial statements misrepresented the terms of the data bank license agreement in that they failed to disclose Von Eugen's role as a business broker. However, this, too, is insufficient to allege fraud because no facts are alleged from which an inference could be drawn that this alleged failure to disclose was fraudulent. In addition, as set forth in paragraph 2(a) of my Reply Affidavit, the newest amended complaint overlooks the following:

(a) Main Lafrentz' sole function in connection with 3I was to render an opinion with respect to 3I's financial statement. The financial statements, and the notes thereto, did not purport to set forth all the particulars of the transaction by which 3I acquired the data bank license from Excerpta Medica. Note 1 to the financial statement sets forth the consideration paid, or to be paid, by 3I in

connection with that acquisition for the purpose of disclosing the consideration given by 3I, not for the purpose of giving a complete disclosure of all of the terms of the agreements by which the data bank license was acquired.

(b) Plaintiff fails to state any reason that 3I should have disclosed Von Eugen's identify. His only relevance to the transaction was that he received part of the consideration given by 3I in connection with the acquisition of the data bank license, and the amount of this consideration was fully revealed.

(c) 3I's letter agreement with Von Eugen (Ex. 2) was filed with the Securities and Exchange Commission ("SEC"). Consequently, no intent to defraud by allegedly masking Von Eugen's identity can be inferred.

Paragraph 34(d)

9. Paragraph 34(d) alleges that the 3I 1970 financial statement failed to disclose that the 3I assets had been "materially overstated and inflated as $1,000,000 by inclusion of the data bank license at cost, whereas in fact defendants had deceptively utilized inflated restricted stock in their transaction." The full facts with respect to the valuation of the data bank license is set forth in paragraphs 17 through 24 of the Moving Affidavit. Suffice it to say at this point that the newest amended complaint ignores the following facts, of which plaintiffs are well aware:

(a) Main Lafrentz issued a qualified opinion with respect to the 3I financial statements as of June 30, 1970, and this opinion was specifically qualified with respect to the value of the data bank license. Therefore, as pointed

out in more detail in my Moving Affidavit and the Memorandum of Law submitted therewith, all stockholders and prospective purchasers were on notice that Main Lafrentz did not necessarily subscribe to the $1,000,000 valuation set forth in the 3I financial statement. Indeed, Main Lafrentz' opinion specifically says that the 3I financial statements fairly set forth the financial condition of 3I "subject to the realization of carrying value of data bank licenses. . . ." (Ex. 5)

(b) In the subsequent year, the international accounting firm of Lybrand Ross Bros. & Montgomery ("Lybrand"), which succeeded Main Lafrentz as 3I's auditors, issued a similar opinion with respect to the value of this data bank license. The 1971 financial statement (Ex. 7) shows that this data bank license was still being carried by 3I at $1,000,000. The Lybrand opinion relies on Main Lafrentz' 1970 opinion as to the value of the data bank license in 1970, but in issuing its own opinion concerning the $1,000,000 valuation in 1971 Lybrand qualified its opinion with respect to "the recovery of the cost of the investment in affiliated company and data bank license." Thus, in 1971, 3I carried the same data bank license at the same value, and its new auditors, Lybrand, issued a similarly qualified opinion.

(c) The method of valuing the data bank license at $1,000,000 was fully set forth in the notes to the financial statements. Specifically, by putting together notes 1 and 6, the financial statements revealed the following:

(1) The total consideration for the acquisition of the data bank license was $1,000,000;

(2) That $1,000,000 included 46,666 shares, which 3I could be required to purchase at $15 per share;

(3) This 46,666 shares was valued at $15 per share, the price at which 3I was obligated to purchase the stock and which was below the market value at the time, for a total value of $700,000;

(4) That $1,000,000 also included 30,000 shares to be issued on December 1, 1970, which 3I was obligated to purchase at $5 per share;

(5) These 30,000 shares were valued at $5 per share, the price at which 3I was obligated to purchase them, and which was below the then market value, for a total of $150,000;

(6) The total value given to the stock issued in connection with the Excerpta Medica agreement, as stated in note 6, was $850,000 ($700,000 plus $150,000);

(7) Subtracting from the $1,000,000 stated to be the total consideration (note 1), the $850,000 worth of stock included therein (note 6), left $150,000 cash, which was the amount paid to Von Eugen pursuant to the agreement with him (Ex. 2).

(d) Note 4 to the 1971 financial statement, (Ex. 8) upon which Lybrand issued its qualified opinion, carries forward the $1,000,000 valuation and the method by which that valuation was reached. The 1971 financial statement says:

> "The cost of obtaining this exclusive right [from Excerpta Medica] was $1,000,000, consisting principally of 46,666 and 30,000 shares of Class A Common Stock, issued in 1969 and 1970, respectively. The Company can be required to repurchase the 46,666 shares at $15 per share in April 1972, and the 30,000 shares at $5 per share until June 30, 1972."

In short, the newest amended complaint again ignores the full disclosure set forth in the notes to the financial statements and, more importantly, omits the crucial fact that Main Lafrentz, like Lybrand in the following year, qualified its opinion with respect to the value of this data bank license.

Paragraph 34(e)

10. Paragraph 34(e) states that the financial statement failed to disclose that Scientific Literature Corp. ("SLC") had sustained a net earnings loss for the fiscal year and that "accordingly" there was no basis for MF's opinion that SLC "would achieve the necessary earnings to support the amended agreement." No specific averment of fraud is made against Main Lafrentz; it is the company, not Main Lafrentz, which is charged with rendering an opinion regarding SLC's earnings which was allegedly without foundation. In addition, the newest amended complaint omits the critical factors which demonstrate that there can be no liability to Main Lafrentz with respect to the transaction regarding SLC.

11. The facts regarding the acquisition of SLC, the amendment to that acquisition agreement, and the disclosure in the 1970 financial statement are set forth in paragraphs 33 through 41 of the Moving Affidavit and will not be repeated here. Suffice it to say that the newest amended complaint omits the following undisputed facts with regard to the alleged failure to disclose the SLC loss:

(a) The SLC "loss" was only $1,055;

(b) That "loss" was disclosed in the 1970 10-K filed by 3I with the SEC;

(c) The consolidated loss of 3I and its subsidiaries, set forth in the 1970 financial statement (Ex. 5), was $555,577, of which the SLC "loss" was a miniscule part;

(d) Under the agreement by which SLC was acquired, additional stock was to be issued to the former SLC shareholders based on the average "pre-tax earnings" of SLC in the 1970 and 1971 fiscal years (Ex. 9, ¶ 15(c)). Paragraph 15 also provided that "pre-tax earnings" of SLC did not include "allocation of general administrative expenses of 3I". The operations of SLC during the 1970 fiscal year actually showed a profit of $81,307 before taxes and allocation of indirect expenses. A charge of $82,362 for indirect general and administrative expenses was made by 3I to SLC, which converted this profit to a loss of $1,055. However, for purposes of the agreement with the SLC shareholders, SLC had actually shown a profit of $81,307 for that fiscal year.

12. Certain restrictions on the operation of SLC in the original acquisition agreement were removed by the amendment agreement with the former SLC shareholders (Ex. 11). The amended agreement states in relevant part:

> "It is in the best interests of the parties to combine the operations of Subsidiary [SLC] with some of those of 3I."

Consequently, 3I received a benefit from the amendment to the acquisition agreement. Whether this was sufficient benefit to support the amendment, including the issuance of the shares of the former SLC shareholder is a matter of business judgment; in addition, it has nothing to do with any cause of action against Main Lafrentz.

13. Assuming, contrary to the fact, that pursuant to the terms of the SLC acquisition agreement (Ex. 9) SLC had actually lost $1,055 in fiscal 1970, this would still not preclude the issuance of additional 3I shares to the former SLC stockholders because: (i) the earnout provision was based on the average earnings in the fiscal years 1970 and 1971, and such a small loss could have been offset by sufficient earnings in the 1971 fiscal year, and (ii) as stated above 3I obtained a benefit from the amended agreement.

14. Perhaps most important, Main Lafrentz issued its qualified opinion with respect to the consolidated financial statement of 3I and its subsidiaries. Main Lafrentz issued no opinion with respect to SLC. Note 1 to the financial statements clearly stated that:

> "In the opinion of the Company, SLC will achieve the necessary earnings which would have entitled the sellers to receive these shares under the original agreement."

Therefore, any shareholder or prospective investor knew that the opinion stated was the opinion of management; and, by reading the Main Lafrentz opinion he knew that Main Lafrentz had issued no opinion with respect to SLC's earnings. As a

result, there can be no liability to Main Lafrentz with respect to this alleged failure to state the SLC supposed loss and the alleged non-existence of the basis for 3I's opinion that SLC would achieve the necessary earnings.

Other Allegations

15. Careful reading reveals that the other allegations in the new complaint either repeat these allegations or are merely conclusory. They charge Main Lafrentz with aiding and abetting others, and the like. These are insufficient allegations to support a fraud action against Main Lafrentz.

16. In closing, it should be noted that in the Moving Affidavit (¶ 4) I pointed to the extremely poor financial condition of 3I, as stated in the 1970 annual report, including substantial losses of $555,577 in 1970 and $692,460 in 1969, and total assets of only $1,647,219, of which over $1.2 million was subject to the Main Lafrentz qualification. I pointed out that no reasonable investor could possibly have relied on this financial statement in making his purchase. It is not surprising, therefore, that Mr. Felton initially purchased his 3I stock without even knowing what business 3I was in, that he read the financial statements only hastily, and that he does not recall whether he even read the notes to the financial statements (Tr. 354-57). It is equally unsurprising that Mr. Egan, in his affidavit seeking to intervene in this action, nowhere mentions the 1970 Main Lafrentz qualified opinion. He alleges he bought his stock after a discussion with someone at the Marine Midland Bank and after reading its report on 3I.

17. These two plaintiffs only confirm Main Lafrentz' position that it should not be a party to this action. The accusations, in generalized terms, against so many disparate defendants, all engaged in some undefined "conspiracy" has, to date, imposed an intolerable burden upon Main Lafrentz and unjustifiably attacked its reputation. This burden should continue no longer, and the action against Main Lafrentz should be dismissed.

/s/

Milton Kunen

Sworn to before me this
12th day of December, 1973.

/s/

Notary Public

ALLAN M. PEPPER
NOTARY PUBLIC, State of New York
No. 41-3059195
Qualified in Queens County
Commission Expires March 30, 1974

NOTICE OF MOTION IN BEHALF OF ARTHUR W. ELIAS, MARVIN S. RIESENBACH AND IRVING H. SHER TO DISMISS AMENDED COMPLAINT
(Filed December 13, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -x

ROBERT R. FELTON, et ano.,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

- - - - - - - - - - - - - - - - - -x

73 Civ. 2200

NOTICE OF MOTION TO DISMISS

(DBB)

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Jerold Oshinsky, Esq., sworn to December 12, 1973, and upon all prior proceedings heretofore had herein, the undersigned will move this Court at Room 1506, United States Court House, Foley Square, New York, New York, on the 31st day of December, 1973 at 9:30 a.m., or as soon thereafter as counsel can be heard for an order pursuant to Rules 8(a) and 9(b) of the Federal Rules of Civil Procedure dismissing the latest amended complaint with prejudice on the ground that it fails to aver fraud and conspiracy with the requisite particularity, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
December 12, 1973

ANDERSON RUSSELL & KILL, P.C.

By _____
Attorneys for Defendants
Arthur W. Elias, Marvin S.
Riesenbach and Irving H. Sher
600 Fifth Avenue
New York, New York 10020
(212) 541-8100

TO: ROBERT R. FELTON, ESQ.
Attorney for Plaintiff
42 Third Avenue
Mineola, New York 11501

TO: LEON, WEILL AND MAHONY
Attorneys for Defendant 3 I
Company
261 Madison Avenue
New York, New York 10016

SULLIVAN AND CROMWELL
Attorneys for Defendants Marine Midland
and Brownstein
48 Wall Street
New York, New York 10005

BREED, ABBOTT AND MORGAN
Attorneys for Defendants Walston and Nissan
One Chase Manhattan Plaza
New York, New York 10005

SHEA, GOULD, CLIMENKO AND KRAMER
Attorneys for Defendants Medische Referatan
and Stichting Excerpta Medica
330 Madison Avenue
New York, New York 10017

KAYE, SCHOLER, FIERMAN, HAYS AND HANDLER
Attorneys for Defendant Main Lafrentz and Co.
425 Park Avenue
New York, New York 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON, et ano.,

Plaintiff,

-against-

WALSTON AND CO., INC., et al.,

Defendants.

73 Civ. 2200

AFFIDAVIT

(DBB)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JEROLD OSHINSKY, being duly sworn, deposes and says:

1. I am a member of Anderson Russell & Kill, P.C., a professional corporation, attorneys for defendants Arthur W. Elias, Marvin S. Riesenbach and Irving H. Sher. I submit this affidavit in support of their motion to dismiss the complaint with prejudice pursuant to Rules 8(a) and 9(b) of the Federal Rules of Civil Procedure on the ground that it fails to aver fraud and conspiracy with the requisite particularity.

2. The sole specific references to defendants Elias, Riesenbach and Sher in the latest version of the complaint appears in paragraphs 22 and 28(e):

"22. Defendants Arthur W. Elias, Marvin S. Riesenbach, Marvin Schiller and Irving H. Sher were officers, directors and shareholders of Information Company of America, I.C.A. and Information Corporation of America on June 30, 1971 when 3 I Co. purchased all the assets of these worthless corporations with 3 I Co. common stock valued at $3,053,857. On or about September 1, 1971, Arthur W. Elias became President and Director of 3 I Co., Marvin S. Riesenbach became Vice President, Treasurer and a Director of 3 I Co. and Marvin Schiller and Irving H. Sher became Vice Presidents of 3 I Co.

"(e) Defendants 3 I Co. and Brodsky conspired and schemed with defendants Arthur Elias, Marvin Riesenbach, Marvin Schiller and Irving Sher to falsely and deceptively declare to the investing public that 3 I Co.'s purchase of all the assets of Information Company of America, I.C.A. and Information Corporation of America was a major viable acquisition. These defendants

did not act at arms-length for their purchase negotiations and thus 3 I Co. paid $2,960,904 for worthless intangible assets."

3. The foregoing allegations of fraud and conspiracy are improper even under the most liberal pleading standards. Plaintiff alleges the mere broad conclusion that these defendants (a) conspired and schemed. . . (b) to falsely and deceptively declare that (c) ICA was "a major viable acquisition". There is not even a single scintilla of fact alleged in support of these bare conclusory statements.

Indeed, Mr. Felton does not, and cannot, set forth even the hornbook requisites of fraud, expecially as to defendants Elias, Riesenbach and Sher. As Mr. Felton has conceded, he made his final purchase of 3I stock on June 7, 1971 which was before he contends that these defendants even came into the picture. Hence, he cannot, and does not, allege he relied on such allegedly false information in purchasing his stock. The renewed effort by Mr. Felton, therefore, to tie these defendants into an alleged conspiracy covering years of activity before they became involved in any way with 3I is patently improper, particularly in the absence of a single factual allegation in support of the conclusory contentions of fraud and conspiracy.

4. Plaintiff has had four opportunities to frame an adequate pleading. His repeated failure to do so warrants an order dismissing the latest amended complaint with prejudice. We have read the memorandum of law submitted by Sullivan & Cromwell in support of their motion to dismiss and we adopt their legal argument and authorities.

Jerold Oshinsky

Sworn to before me this
12th day of December, 1973.
ANNE FITZGERALD

NOTICE OF MOTION IN BEHALF OF MA RINE MIDLAND AND JOEL BROWNSTEIN TO DISMISS AMENDED COMPLAINT (Filed December 14, 1973)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

ROBERT R. FELTON, et ano.,

Plaintiffs,

-against-

WALSTON & CO., INC., et al.,

Defendants.

- x

No. 73-Civ.-2200-DBB

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the amended complaint dated November 29, 1973, and all prior proceedings herein the undersigned will move this Court on December 31, 1973 before Honorable Dudley B. Bonsal, Room 1506, United States Court House, Foley Square, New York, New York at 9:30 a.m. or as soon thereafter as counsel may be heard, for an order pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the amended complaint herein without leave to amend, by reason of the failure of the plaintiff to comply with the provisions of Rule 9(b) of the Federal Rules of Civil Procedure that "the circumstances constituting fraud or mistake shall be stated with particularity", and for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 9(c)(2) of the General Rules of this Court, all papers in opposition to this motion must be served at least three days prior to the return date hereof.

Dated: New York, New York
December 12, 1973

SULLIVAN & CROMWELL

By William E Willis
(A Member of the Firm)
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and Joel Brownstein
48 Wall Street
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(212) 952-8100

TO: ROBERT R. FELTON
Plaintiff pro se
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BREED ABBOTT & MORGAN
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James Nissan & Walston & Co., Inc.
One Chase Manhattan Plaza
New York, New York 10005

LEON WEILL & MAHONEY
Attorneys for Defendant
3i Company, - Information Intersciences, Inc.
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New York, New York 10016

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Attorneys for Defendants
Medische Referatan, et al.
330 Madison Avenue
New York, New York 10017

KAYE SCHOLER FIERMAN HAYS & HANDLER
Attorneys for Defendant
Main Lafrantz & Co.
425 Park Avenue
New York, New York 10022

ANDERSON, RUSSELL & KILL, P.C.
Attorneys for Defendants
Riesenbach, Elias and Sher
600 Fifth Avenue
New York, New York 10020

NOTICE OF MOTION IN BEHALF OF STICHTING EXCERPTA MEDICA TO DISMISS THE AMENDED COMPLAINT (Filed December 18, 1973)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON, et ano., Plaintiff, -against- WALSTON & CO., INC., et al., Defendants.	73 Civ. 2200 (DBB) NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE, that upon the summons and amended complaint dated November 29, 1973, and all prior proceedings herein, the undersigned will move this Court before the Honorable Dudley B. Bonsal in Room 128 of the United States Court House, Foley Square, New York, New York, on December 31, 1973 at 9:30 A. M., or as soon thereafter as counsel can be heard, for an order pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure dismissing the amended complaint herein as to defendant Stichting Excerpta Medica (Excerpta Medica Foundation) on the grounds that (1) plaintiffs have again failed to plead allegations of fraud with particularity, and (2) the complaint fails to state a claim against Stichting upon which relief can be granted, and for such other and further relief as to the Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Rule 9(c)(2) of the General Rules of this Court, all papers in opposition to this motion must be served at least three days prior to

the return date hereof.

Dated: New York, New York
December 13, 1973.

Yours, etc.

SHEA GOULD CLIMENKO & KRAMER

By /s/ Bruce Becker
A Member of the Firm
Attorneys for Defendant,
Stichting Excerpta Medica
(Excerpta Medica Foundation)
330 Madison Avenue
New York, New York 10017
(212) 661-3200

TO:

ROBERT R. FELTON, ESQ.
Plaintiff, Pro Se and
Attorney for Plaintiff
Edward J. Egan
42 Third Avenue
Mineola, New York 11501

LEON WEILL & MAHONEY, ESQS.
Attorneys for Defendant
3 I Co./Information Interscience, Inc.
261 Madison Avenue
New York, New York 10016

SULLIVAN & CROMWELL, ESQS.
Attorneys for Defendants
Marine Midland Bank and Joel
Brownstein
48 Wall Street
New York, New York 10005

BREED ABBOTT & MORGAN, ESQS.
Attorneys for Defendants
Walston & Co., Inc. and James Missan
One Chase Manhattan Plaza
New York, New York 10005

TO:

KAYE SCHOLER FIERMAN HAYS & HANDLER, ESQS.
Attorneys for Main Lafrentz & Co.
425 Park Avenue
New York, New York 10022

ANDERSON RUSSELL & KILL, P.C.
Attorneys for Messrs. Riesenbach,
Elias and Sher
600 Fifth Avenue
New York, New York 10020

NOTICE OF MOTION IN BEHALF OF 3 I CO. TO DISMISS THE AMENDED COMPLAINT (Filed December 18, 1973) 528a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON, et ano.,

Plaintiffs,

- against -

WALSTON & CO., INC., et al.,

Defendants.

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73 Civ. 2200 (DBB)

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE, that upon the amended complaint dated November 29, 1973, and all prior proceedings herein, the undersigned will move this Court before the Honorable Dudley B. Bonsal, in Room 128 of the United States Court House, Foley Square, New York, New York, on December 31, 1973 at 9:30 A.M., or as soon thereafter as counsel can be heard, for an order pursuant to Rules 9 (b) and 12 (b) (6) of the Federal Rules of Civil Procedure dismissing the amended complaint herein as to defendant, 3i Company/Information Interscience, Inc., on the grounds that (1) plaintiffs have again failed to plead allegations of fraud with particularity, and (2) the complaint fails to state a claim against said defendant upon which relief can be granted, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
December 14, 1973.

Yours, etc.,

LEON, WEILL & MAHONY

By_____
A Member of the Firm
Attorneys for Defendant
3i Company/Information
Interscience, Inc.
Office & P. O. Address
261 Madison Avenue
New York, New York 10016
(212) MU7-5707

ANSWER OF WALSTON AND CO. TO THE SECOND AMENDED COMPLAINT
(Filed January 4, 1974)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON and EDWARD J. EGAN, Plaintiffs, -against- WALSTON AND CO., INC., et al., Defendants.	73 Civ. 2200 (DBB) ANSWER

Defendants Walston & Co., Inc., whose name has been changed to duPont Walston Incorporated ("Walston"), and James Nissan ("Nissan"), by their attorneys, Breed, Abbott & Morgan, for their answer to the second amended complaint herein:

1. Deny each and every allegation contained in paragraphs 1, 5, 28, 29, 30, and 31, except deny knowledge or information sufficient to form a belief with respect to the allegations contained in said paragraphs insofar as they pertain to defendants other than Walston and Nissan.

2. Deny each and every allegation contained in paragraphs 2, 6, 8, 9, 10, 11, and 12.

3. Deny each and every allegation contained in paragraph 3, except admit that 3I Co./Information Interscience, Inc. ("3I") was and is a corporation with securities publicly traded in the over-the-counter market, that Walston maintains brokerage offices within this District, and that Marine Midland Bank maintains offices within this District.

4. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraphs 4, 7, 17, and 18.

5. Admit, on information and belief, the allegations contained in paragraphs 13 and 14.

6. Deny each and every allegation contained in paragraph 15, except admit that Walston is a Delaware corporation engaged in a general securities business with principal offices in the City, County, and State of New York.

7. Deny each and every allegation contained in paragraph 16, except admit that Nissan is a registered representative licensed to purchase and sell securities upon the exchanges and over the counter, was a Vice President of Walston, and was a stockholder of 3I and a co-guarantor of a bank loan made to 3I.

8. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraph 19, except admit that Brownstein was a securities analyst in Marine Midland's employ and that documents bearing dates of May 17, 1971, June 8, 1971, August 10, 1971, and September 7, 1971, relating to 3I and indicating that Brownstein is the author, exist.

9. Deny knowledge or information sufficient to form a belief with respect to the allegations contained in paragraphs 20, 21, 22, 23, 24, 25, 26, 27, 33, and 34, except admit, on information and belief, such portions of said allegations as contain information set forth in annual reports of 3I.

10. With respect to paragraph 32, repeat their answers heretofore given with respect to the allegations therein referred to.

FIRST DEFENSE

11. This action does not meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and hence may not be maintained as a class action.

SECOND DEFENSE

12. The second amended complaint fails to state a claim against Walston or Nissan upon which relief can be granted.

THIRD DEFENSE

13. The second amended complaint does not comply with the requirement of Rule 9(b) of the Federal Rules of Civil Procedure that the circumstances constituting alleged fraud must be stated "with particularity."

FOURTH DEFENSE

14. The claims asserted in the second amended complaint are barred by laches and by the applicable statute of limitations.

FIFTH DEFENSE

15. Plaintiff Felton, in connection with his transactions in 3I stock, failed to exercise such diligence and care as is required in order for him to recover his market losses from these defendants.

SIXTH DEFENSE

16. Plaintiff Felton, by his actions and conduct in connection with his transactions in 3I stock, has waived the claims herein asserted against these defendants and is estopped and otherwise barred from any recovery on the claims asserted.

WHEREFORE, defendants Walston and Nissan demand judgment dismissing the second amended complaint, together with costs and disbursements of this action.

Dated: New York, N.Y.
December 12, 1973

BREED, ABBOTT & MORGAN
By _____
A Member of the Firm
Attorneys for Defendants Walston & Co., Inc. and James Nissan
1 Chase Manhattan Plaza
New York, N.Y. 10005
944-4800

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ROBERT R. FELTON,

Plaintiff,

v. 73 Civ. 2200

WALSTON AND CO., INC., et al.,

Defendants.

New York, New York
January 7, 1974 - 10:00 a.m.

BEFORE: HON. DUDLEY B. BONSAL,

District Judge.

PRESENT:

ROBERT R. FELTON, Esq.
WILLIAM WILLIS, Esq.
HILTON KUNEN, Esq.
JULIUS WINN, Esq.
JEROLD OSHINSKY, Esq.
BRUCE HECKER, Esq.

THE COURT: Gentlemen, as I understand it, this is a series of motions to dismiss Mr. Felton's most recent complaint, is that right? I sort of gathered, from reading the papers, that Main Lefrentz, the accountants are really seeking summary judgment. You are moving for summary judgment and I think the rest are moving to have the complaint dismissed on the ground it doesn't comply with the rules.

So far as your motion is concerned, I want to study the papers a little more. I think your point is that whatever they say about you, there is no basis for any action --

MR. KUNEN: That is correct, your Honor. I think an argument may be helpful, but --

THE COURT: I think I heard you before and made notes of it before. It has not changed?

MR. KUNEN: It has not changed, your Honor, except we have now simplified the issues because they have served an amended complaint, as your Honor has directed, and in Paragraph 34 of this amended complaint, he has indicated A, B, C, D and E, the particulars, and they are not properly stated, but he has indicated the particulars on which he contends that the balance sheet for the fiscal year ending June 30, 1970 was improper,

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UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y., N.Y. 10007 TELEPHONE CORTLANDT 7-4580

and we have originally made a motion to dismiss and now, predicated on the amended complaint, we have served a new motion and put them both together.

So, in reading the motion papers, your Honor has, I take it, our black book, which has all the exhibits, and you have the original motion papers and now you have our notice of motion, which is dated December 12, 1973, and in that notice of motion we cagegorically, following the numbers of Paragraph 34 of his amended complaint, take up each of the specific items of the amended complaint and point out to your Honor why we say they are improper and he has not stated a cause of action against Main Lefrantz.

I am prepared to clarify it for your Honor and argue it at this time or any other time.

THE COURT: All right. I think what I would rather do, I want to review the papers on that. I did feel your position was a little different than the other, and I would like to study it, and if I want further argument, I will let you know.

MR. KUNEN: I think I can be helpful and expedite it for your Honor at any time.

THE COURT: Thank you very much.

Let's start with Marine Midland. Mr. Willis?

MR. WILLIS: We have filed this motion to dismiss this latest version of the plaintiff's complaint.

As your Honor recalls, the plaintiff here brought some 3 I stock when it was cheap. He bought and sold as it went up, and he finally ended up with 2,000 shares at the end and then the stock went down.

He then began suing people, including Marine Midland, and after the lawsuit was commenced, came into possession of the so-called report on which he bases his claim against Marine Midland.

I have not received any papers from the plaintiff in opposition to our motion. I understand one of the defendants received something in the mail this morning. I don't propose to hold anything up, but --

THE COURT: I received a memorandum from the plaintiff -- when did the plaintiff file this memorandum?

MR. FELTON: The memorandum in opposition to these motions was served on Thursday, the 4th -- the 3rd of January, rather, and it was filed on the 4th, which was Friday.

MR. HECKER: I never received one, your Honor. Perhaps Mr. Felton mailed it --

MR. FELTON: It was mailed, your Honor.

THE COURT: I think that explains it. You will

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probably get it in due course.

MR. WILLIS: Your Honor, my problems with the complaint, as it is now constructed, fall into three categories.

First, it violates the rule of this Circuit that allegations of fraud may not be made upon information and belief. Here, the entire complaint is upon information and belief.

Secondly, as to Marine Midland, he purports to lump into one group twelve banks located throughout New York State. He uses the catchall phrase, "Marine Midland," to cover Marine Midland New York, the holding company, Marine Midland Chautaqua, Tinker National Bank, and so forth. He does this, I think, as an effort to cloud the fact that he is not able to allege allegations with any specificity against individual defendants and he is hopeful some way, somehow, an allegation will be provable as against one defendant and another defendant will help him on some other allegation. I think this is wholly improper. If he has a case against the Marine Midland Chautaqua, he should set forth specifically what that bank did which caused him any harm.

Thirdly, your Honor, we get into his continued general statements of wrongdoing. He uses, again, the

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
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same language that he has used in the prior complaints of common scheme and false and untrue and deceptive practices, conspiracy, and so forth, without setting forth specifically in what respect Marine Midland has defrauded him.

In his charging paragraph of Count 1, which is the only one which Marine Midland is involved in, Paragraph 28, he first goes through a number of paragraphs of individual conspiracies, A and B conspired, C and D conspired, A and C conspired, and most of these have nothing at all to do with Marine Midland.

Then he gets down to the last item, which is Subparagraph F, where he claims that 3 I, the company, and Brodsky conspired and schemed with Brownstein and Nissan, and then, as far as Marine Midland is concerned, with the knowledge and assistance and connivance of Marine Midland, and that is followed by lots of general statements, and then six items of so-called specifics.

These are the specifics, I assume, of which Marine Midland had some knowledge or did something to aid, conspire, connive, without making clear what it is Marine Midland supposedly has done.

The first item, it says, "deceptively and falsely delayed the financial terms of the aforesaid

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE

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Excerpta Medica license agreements." There is no statement here as to in what respect Marine Midland's report, which of course Felton never saw -- in what respect that report was false or was misleading, and there is nothing to suggest that the report did anything but copy from published material that 3 I had put out.

The second item is that it deceptively understated the 3 I loss of earnings for fiscal 1970. This is one not explained, but from Mr. Felton's deposition I know what he has in mind there: The report which Marine Midland employees prepared set forth the losses for 1970 in two parts. The loss was in part from continuing operations and in part from a non-recurring loss of $149,000.

Then, on the first page of the report, there is an abbreviated earnings loss per share and Mr. Felton objects to the fact that the figure of 25 cents a share did not reflect the non-recurring earnings loss, which he may object to as a way of presenting it, but certainly the facts were there.

The third item that he complains of is that it deceptively grossly overestimated unfounded 3 I earnings for 1971, and there is no question that the writer of this report thought the company was going to do

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
FOLEY SQUARE, N.Y. 10007 TELEPHONE: (CORTLANDT 7-4580

a lot better than it did, but that is not fraud.

The fourth item is that he deceiptively grossly overestimated unfounded 3 I earnings for fiscal '72, which this report did. They expected the company to do well the next year as well. But, again, I submit that is not fraud.

The fifth item is deceptively stated a price-earnings ratio for the 3 I common stock. Well, this is merely repeating the previous one, because if you overestimate the earnings, then the price-earnings ratio will have to follow.

Finally, that Marine Midland continued to recommend the 3 I stock despite Mr. Brownstein's receipt of a letter of disavowal and error. Certainly Mr. Brownstein received a letter from Mr. Brodsky, then president of 3 I, which said that 3 I of course properly could take no position with respect to earnings for the future, but Mr. Brownstein continued to feel the company was a good buy and continued to recommend it. Again, this is hardly fraud.

I suggest, your Honor, that Mr. Felton has not complied with the rulings of the Court with respect to the last complaint and that the motion to dismiss this complaint should be granted.

THE COURT: Mr. Winn?

MR. WINN: Your Honor, I represent the 3 I Company and there is nothing much more I can add to what Mr. Willis said.

THE COURT: All right.

MR. WINN: There would be no purpose in going through the same thing.

THE COURT: Mr. Oshinsky?

MR. OSHINSKY: I represent the defendants Riesenbach, Elias and Sher.

I would like to point out I adopt Mr. Willis' argument with respect to the impropriety of the allegations of fraud and general allegations of wrong-doing and emphasize that 99.9 per cent of this complaint has nothing to do with these three defendants. The sole charging paragraph with respect to defendants Riesenbach, Elias and Sher is Paragraph 28-E, which contains general statements and general blandishments about deceptively declaring, conspiring and scheming, etc., and with respect to that we adopt Mr. Willis' arguments and point out this is an improper framing for a pleading and should be dismissed and these defendants should not be further dragged into conspiracy or allegations of conspiracy that have nothing to do with them.

SOUTHERN DISTRICT COURT REPORTERS
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MR. KUNEN: Your Honor, on behalf of Main Lefrentz, I move to dismiss, in addition to summary judgment.

THE COURT: I understand. In addition, you are saying if it isn't dismissed, you are entitled to summary judgment.

MR. KUNEN: Thank you.

MR. HECKER: Your Honor, I represent Stichting Excerpta Medica Foundation, together with three other Dutch companies which were at that time its subsidiaries.

The three subsidiaries have pending before your Honor a motion to dismiss for lack of jurisdiction, and Stichting Excerpta Medica joins with the other defendants in making this motion to dismiss for failure to comply with the rules.

It is alleged that the one-time subsidiaries of the moving defendant, Stichting, sold a data bank to 3 I. It is alleged that the data bank was worthless. Somehow, this allegation imposes, allegedly, liability on the parent, which didn't even make the sale, on the basis of a further allegation that it conspired with 3 I to inflate the value of 3 I's stock -- I'd better read this, because I can never remember it -- "to enhance

SOUTHERN DISTRICT COURT REPORTERS
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the financial statement by the use of a worthless data bank," and "conspired and schemed to deceptively utilize inflated, restricted stock."

Now, I really can't attempt to translate that or paraphrase it for your Honor because I don't know what it is supposed to mean, but as I understand the thrust of the allegations against Excerpta, it is that its subsidiaries sold a data bank for 3I stock and that somehow that is a wrong. I fail to perceive it.

THE COURT: Mr. Felton?

MR. FELTON: I would like to speak for just myself, first, as to the remarks of Mr. Hecker.

I believe Mr. Hecker, if he read completely from the charging allegation, that particular paragraph, he would get a better idea of exactly what the thrust of the charge against Excerpta Medica is. I may say this parenthetically, that in the motion of the subsidiaries and in the reply, which was not argued, which was submitted, the fact is that the parent controlled and indemnified this agreement.

This particular charging paragraph of this complaint stated that the conspiracy was the use of a worthless data bank, stated as an asset, equivalent to 62 per cent of the balance sheet assets of 3 I, and that,

SOUTHERN DISTRICT COURT REPORTERS
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further, the asset, the 62 per cent of the entire 3 I Co. balance sheet assets was --

THE COURT: What does that have to do with Excerpta Medica's parent, this particular defendant?

MR. FELTON: The moving defendant in this particular case happens to be the parent, your Honor, but Mr. Hacker suggested that the agreement was between the subsidiaries and 3 I, but I say that the fact is that the indemnification agreement brought 3 I and the subsidiaries together with the parent for this particular portion of the conspiracy. The fact of the matter is, the stock used for these assets were never repurchased and on the 3 I Company balance sheet --

THE COURT: I will tell you what is bothering me: Let's assume the data bank was worthless -- I will start with that assumption -- and the data bank was sold for stock; right?

MR. FELTON: Yes, sir.

THE COURT: And I can see that would be a charge of wasting assets, or one thing or another, against the management, but why does that bring either the parent or the subsidiaries into what you call a conspiracy?

MR. FELTON: Because, sir, the fact is that the stock was never ever repurchased according to the

agreement that required repurchasing and in the 1972 10 K, indicated in this --

THE COURT: What is the effect of the stock not being repurchased?

MR. FELTON: The fact is 3 I said, "We will repurchase the contract at $15 a share," and they never did --

THE COURT: Why does that bring in the other people?

MR. FELTON: Do you mean --

THE COURT: Excerpta Medica or those people with these funny names.

MR. FELTON: They took a small company and built it up to doubling the assets and never intended --

THE COURT: I want you to tell me, if there is a conspiracy here, how are all these outfits with the funny names in the conspiracy?

Let's assume they sold a data bank that was worthless --

MR. FELTON: Let's assume they never really sold a data bank, there was no data bank to be sold, because if there was, we would have had stock and said to the people --

THE COURT: I thought you said they did sell a

data bank which was worthless and which was shown on the balance sheet at a very high value, something like 60 per cent of the assets?

MR. FELTON: That's right, there was window dressing on the balance sheet.

THE COURT: Where are the people with the funny names involved in that conspiracy?

MR. FELTON: They allowed themselves to window dress the balance sheet.

THE COURT: They wanted to get rid of the worthless data bank and got some stock?

MR. FELTON: They never asked for money for the stock, they allowed the stock rights to terminate.

THE COURT: Maybe they were gambling on the stock, thought it would go up.

MR. FELTON: In 1972 the stock had certain value and they allowed it to go to 25 cents a share and never asserted their rights.

THE COURT: We get cases all the time of people who buy stock and let the value go down. It has been happening recently quite a bit.

Is that a conspiracy?

MR. FELTON: This is 30,000 shares of stock they had a right to ask for at $15 a share.

THE COURT: I just wanted an answer to the question as to what the role of these other people was.

MR. FELTON: I want to come for a moment to the accountant, Main Lefrentz. In this particular motion before the Court, Main Lefrentz is arguing in the alternative. On the one hand they say there is no particularity, but, on the other hand, they are asking for renewing their position for a summary judgment. They want summary judgment because there is no genuine issue as to a material fact. That has been argued before and an addendum is in the papers before the Court, but I say this: If as each one of these gentlemen said --

THE COURT: I think Main LeFrentz, although they join in the motion to dismiss, their argument is they have answered in the papers every allegation about them and, in any event, you have not established any kind of claim against them.

MR. FELTER: They are attacking the specificity of the particular claim --

THE COURT: They are more than attacking the complaint --

MR. FELTON: My argument involving the Main Lefrentz company -- Section 34 states that as far as

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the certificate in 1970, and the notes, they failed to disclose the 3 I Co. subsidiary, Scientific Literature Corporation, and their earnings, for fiscal 1970, and there was no basis for 3 I's opinion that the subsidiary would achieve the necessary earnings to support the amended agreement.

By arguing this point, I will tie it into something argued by Marine Midland. I don't want to say that the thrust of my objection to the summary judgment rests only on 34-E, but I said before there are genuine issues of fact as to every allegation as to Main Lefrentz. What I have done, I have sent along with this opposition memorandum some exhibits, among which is --

THE COURT: I saw that. I will read the exhibits. You need not read them to me.

MR. FELTON: What I say ties into one of the arguments Mr. Willis proposed this morning, and that is as far as pleading upon information and belief, and so forth --

THE COURT: I'm not worried about that. Don't worry about that. I'm more worried about the other points raised. In all these paragraphs there is language about conspired and schemed to so-and-so, involving different people, and there is not much of a factual

SOUTHERN DISTRICT COURT REPORTERS
U.S. COURT HOUSE

basis. That is purely a conclusory statement.

MR. FELTON: Let me point out the one point Mr. Willis glossed over, and that is Paragraph 28, Subparagraph F, Subsection 6, and I wish at this point to specifically refer, if I may, to the letter of disavowal of June 23, 1971, Exhibit C, and also to the bulletin of Mr. Brownstein, Exhibit D.

In that particular subsection I stated that the Marine Midland Bank and Brownstein fraudulently continued to recommend the financial aspects of 3 I Co. despite Brownstein's receipt of the Brodsky letter of disavowal. That is Exhibit C.

I also indicated in my memorandum a portion of the testimony of Mr. Brownstein when he received this particular letter from Mr. Brodsky, "Just as I was stunned by the letter, I tried to reach Mr. Brodsky for three weeks. He did not return my phone calls. When he finally did, it was a long distance call and I was, you know, upset about that letter. I said, 'Well, what about the letter?' He said, well the attorney suggested that he do that but to forget about it, don't show it to anybody and throw it away." He didn't show it to anybody for at least two months, but he wrote a bulletin on August 8th and in the bulletin he stated, among other

things, "Since nothing has changed fundamentally, we would suggest rereading our May 17th report."

Mr. Willis said something to the effect that I never read the report, but I have covered that in my papers previously and also in the papers to them.

Firstly, in the complaint it was alleged plaintiffs received it, both myself and Plaintiff Egan received the report. It is true, I didn't receive the report to my last purchase in June, but I say this, and I testified under oath at my deposition, that I was told about this report and also told that the bank was purchasing this stock prior to my purchase, and that was one of the bases of my reliance on the purchase of stock that particular last time. Everything that Mr. Willis said as far as the fact that this was information received by Mr. Brownstein and this was all public records is damning on the basis of the letter he received June 23, 1971, and as I specifically stated in Paragraph 6, although Brownstein had the duty to communicate his bulletins, the adverse information contained in Brodsky's letter, Brownstein failed to do so and continued to induce the purchase of 3 I Co. stock.

Now, I say this respectfully, your Honor: There were certain cases cited by Mr. Willis in his moving

memorandum, and one of them was the case of Heart Disease Research Foundation against General Motors, wherein I excerpted the quotation that the Federal Rules permit statement of the ultimate facts. I respectfully suggest that is what this particular complaint was. This complaint was never attacked for particularity by any of these moving defendants, when originally presented to them, after their original motion on the original complaint.

THE COURT: Yes, I have that in mind. You mentioned that.

MR. FELTON: The basis of the two motions made subsequent to that was for purposes of adding in the Marine Midland Bank subsidiaries, and the question was asked, would I be allowed to ask them, and I believe the Court's direction was that I was.

I believe the direction of the Court in its motion to dismiss the complaint, original amended complaint, was requesting a short and concise plain statement which is, according to Rule 8, of course with the specificity required by Rule 9-B. I don't know where there could be any more specificity against Marine Midland than what has been alleged in the subsections of Paragraph 28, and I further state --

THE COURT: Let me say this: I think this complaint is quite an improvement over the last one and you did a lot of things I wanted you to do. I have trouble sifting it out because you do continue to use all these words, "conspired," "schemed," and all that kind of thing a good many times.

There is another thing that makes my problem difficult, and that is your brief where you carried over these fraudulent motives to the lawyers for the defendants. They are members of this bar, just like you are, and I don't think it helps to use the words in a brief about your opponents, "spurious," "hypocritically,""obviously tailored," "Sullivan and Cromwell attempts to confuse," and "Sullivan and Cromwell has for its own purposes distorted the facts"; and that makes my life difficult.

I will sit down again with your complaint and consider it as to each of the defendants and see whether I find if I can allow it to stand. I will do that and I will give you, as I must, the benefit of the doubt.

MR. FELTON: May I ask one thing, your Honor, in defense of perhaps my hasty statements?

THE COURT: It was just a question of your language, which makes my life very difficult. There is

a lot of that.

MR. FELTON: May I say two things, your Honor?

THE COURT: Go ahead.

MR. FELTON: Firstly, on Page 7 of the moving memorandum of Sullivan and Cromwell, the last line, "ad nausea," maybe that prickled me slightly, my spine, but there it was. On Page 7 he said, "The only fact to which plaintiff can point is the price of 3 I stock declining following his final purchase," and I say this respectfully, there are more facts alleged than that particular fact because, specifically, the complaint indicates the stock was substantially and artificially increased in price, and a statement as bald as that, I think that is not cricket.

MR. KUNEN: Your Honor, there was something about this Section 34-C of the complaint and I would like to show your Honor the great lengths that have been gone to to withhold information from your Honor. On Page 34-E, which Mr. Felton talked about, he said that the balance sheet report failed to disclose that the 3 I Company subsidiary, Scientific Literature Corporation, sustained a net earnings loss for the fiscal year and there was no basis for 3 I's opinion that 3 I could achieve the necessary earnings to

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support the amended agreement, and in the footnotes to this balance sheet it stated as follows, and this is a balance sheet as of June 30, 1970, and something which is commented on because it occurred after the audit period:

"The company stated that on November 2, 1970 the company amended the agreement whereby it acquired Scientific Literature Corporation, a wholly owned subsidiary. The amended agreement released the company from certain restrictions in regard to the operation of SLC and requires the company to issue to the former shareholders 44,800 shares of Class A common stock which have been or could have been earned contingent upon earnings of SLC. These shares are reflected as outstanding in the accompanying financial statements. In the opinion of the company, SLC will achieve the necessary earnings which would have entitled the sellers to achieve these shares under the original agreement."

That agreement is attached as Exhibit C.

Your Honor, there was no loss, there was a charge by the parent to the subsidiary. The loss was $1,100 after the parent charged $82,000, but, more important, this consolidated report showed a loss of $550,000 and so what was withheld was this theoretical

OPINION OF THE COURT BELOW
(Filed March 29, 1974)

MEMO-DECISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
S.D. N.Y.
MAR 29 4 20 PM '74

ROBERT R. FELTON and
EDWARD J. EGAN,

Plaintiffs,

-against-

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANKS, INC., MARINE MIDLAND BANK - WESTERN, MARINE MIDLAND BANK - NEW YORK, MARINE MIDLAND BANK - ROCHESTER, MARINE MIDLAND BANK - CENTRAL, MARINE MIDLAND BANK - SOUTHERN, MARINE MIDLAND BANK OF SOUTHEASTERN NEW YORK, N.A., MARINE MIDLAND BANK - NORTHERN, MARINE MIDLAND BANK - EASTERN NATIONAL ASSOCIATION, MARINE MIDLAND BANK - CHAUTAQUA, NATIONAL ASSOCIATION, MARINE MIDLAND TINKER NATIONAL BANK, DREYFUS - MARINE MIDLAND, INC., JOEL BROWNSTEIN, 3 I CO./INFORMATION INTERSCIENCE, INC., GERALD L. BRODSKY, MAURICE BRODSKY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), MEDISCHE REFERATAN (EXCERPTA MEDICA) N.V., INFONET (EXCERPTA MEDICA - RESCONA) N.V., ELTRAC (INFONET) N.V., PETER WARREN, MAIN LAPRENTZ AND CO., FRED VON EUGEN, S. KIM KESSLER and GERALDINE KESSLER,

Defendants.

73 Civ. 2200

MEMORANDUM

#410529

APR 1 - 1974

Appearances:

ROBERT R. FELTON, ESQ.
42 Third Avenue, Mineola, N.Y. 11501
Attorney for Plaintiffs

(Appearances continued)

ORDER AND MEMORADUM DECISION OF THE COURT BELOW MEMO-DECISION
(Filed March 29, 1974)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
S.D. OF N.Y.
MAR 29 4 20 PM '74

ROBERT R. FELTON and
EDWARD J. EGAN,

Plaintiffs,

-against-

WALSTON AND CO., INC., JAMES NISSAN, MARINE MIDLAND BANKS, INC., MARINE MIDLAND BANK - WESTERN, MARINE MIDLAND BANK - NEW YORK, MARINE MIDLAND BANK - ROCHESTER, MARINE MIDLAND BANK - CENTRAL, MARINE MIDLAND BANK - SOUTHERN, MARINE MIDLAND BANK OF SOUTHEASTERN NEW YORK, N.A., MARINE MIDLAND BANK - NORTHERN, MARINE MIDLAND BANK - EASTERN NATIONAL ASSOCIATION, MARINE MIDLAND BANK - CHAUTAQUA, NATIONAL ASSOCIATION, MARINE MIDLAND TINKER NATIONAL BANK, DREYFUS - MARINE MIDLAND, INC., JOEL BROWNSTEIN, 3 I CO./INFORMATION INTERSCIENCE, INC., GERALD L. BRODSKY, MAURICE BRODSKY, ARTHUR W. ELIAS, MARVIN S. RIESENBACH, MARVIN SCHILLER, IRVING H. SHER, STICHTING EXCERPTA MEDICA (EXCERPTA MEDICA FOUNDATION), MEDISCHE REFERATAN (EXCERPTA MEDICA) N.V., INFONET (EXCERPTA MEDICA - RESCONA) N.V., ELTRAC (INFONET) N.V., PETER WARREN, MAIN LAPRENTZ AND CO., FRED VON EUGEN, S. KIM KESSLER and GERALDINE KESSLER,

Defendants.

73 Civ. 2200

MEMORANDUM

#410529

APR 1 - 1974

Appearances:

ROBERT R. FELTON, ESQ.
42 Third Avenue, Mineola, N.Y. 11501
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(Appearances continued)

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Of Counsel

BONSAL, D. J.

Defendants Main Lafrentz & Company ("Lafrentz"), Marine Midland Bank-New York ("Marine Midland"), 3i Company/Information Interscience, Inc. ("3i Co."), Stichting Excerpta Medica (Excerpta Medica Foundation)("Stichting"), Joel Brownstein, Arthur W. Elias, Marvin S. Riesenbach, and Irving H. Sher, move pursuant to Rules 9(b) and 12(b)(6), Fed. R. Civ. P., to dismiss the amended complaint (filed on November 29, 1973) as against them on the grounds that it fails to allege fraud and conspiracy with sufficient particularity and on the ground that the complaint fails to state a claim upon which relief can be granted. In the alternative, Lafrentz moves pursuant to Rules 12(b)(6) and 56, Fed. R. Civ. P., for summary judgment. Defendants Medische Referatan (Excerpta Medica) N.V. ("Medica"), Infonet (Excerpta Medica-Rescona) N.V. ("Infonet"), and Eltrac (Infonet) N.V. ("Eltrac"), move pursuant to Rule 12(b)(2) and 12(b)(5), Fed. R. Civ. P., to dismiss the complaint against them for lack of personal jurisdiction and for insufficiency of service of process. Plaintiffs move for an order permitting this action to proceed as a class action pursuant to Rule 23, Fed. R. Civ. P.

Plaintiff Felton, an attorney, instituted this action pro se on May 17, 1973. On July 30, 1973 the Court granted defendants' motion to dismiss the complaint, but granted the plaintiff

Felton leave to serve and file an amended complaint, which he did. Thereafter, plaintiff sought leave to file two additional amended complaints. On November 19, 1973 the Court granted plaintiff leave to serve and file a "final" amended complaint, which he did on November 29, 1973. It is this complaint, which added Mr. Egan as a plaintiff, to which the present motions are addressed.

The amended complaint alleges that 3i Co. is a publicly held Pennsylvania corporation which issued common stock sold to the public in the over-the-counter market; that defendant Walston & Co., Inc. ("Walston") is a Delaware corporation engaged in the stock brokerage business and was a dealer in and made a market for 3i Co. common stock; that Marine Midland and its various subsidiary banks located in New York State traded in 3i Co. common stock; that Stichting and its subsidiaries, Medica, Infonet, and Eltrac, are Netherlands corporations which agreed to sell an allegedly worthless data bank license to 3i Co. for 46,666 shares of restricted, legended stock; and that Lafrentz is a partnership engaged in the business of accounting. The amended complaint alleges that defendants have "engaged in acts, practices and courses of conduct which constitute violations of Sections 10(b) and 20 of the Securities Exchange Act of 1934 ..., the statutory law of the State of New York and principles of common law." However, while the amended complaint alleges that plaintiff Felton

has been "both a purchaser and a seller of common stock, Class A, issued by defendant 3 I Co. [sic] and is at present a holder of 2,000 shares" and that plaintiff Egan (who is also an attorney) was "the purchaser of 200 shares of 3 I Co. [sic] common stock, Class A," the amended complaint does not allege when the shares were purchased nor at what prices. Jurisdiction is alleged under 15 U.S.C. § 78aa and pendent jurisdiction.

The amended complaint contains two counts. The first count alleges that all of the defendants except Lafrentz engaged in a "common scheme and a common course of fraudulent action to wilfully, directly and indirectly, defraud and deceive plaintiffs" by presenting to the investing public a false and inflated present and future financial picture of 3i Co. as an expanding company making "major viable acquisitions." The second count alleges that Lafrentz participated in the alleged fraud through its certification of 3i Co.'s 1970 Annual Report. In particular, the amended complaint makes the following allegations in Count I:

1) that 3i Co. and defendant Gerald Brodsky (allegedly "the chief [3i Co.] Officer and Director") conspired and schemed with others to purchase and use a "worthless" data bank license to enhance the financial statements of 3i Co.;

2) that for "fiscal year 1970" the 3i Co. balance sheet understated liabilities of the company by $150,000;

3) that in connection with an amendment to the agreement whereby Scientific Literature Consultants, Inc. was merged into Scientific Literature Corporation ("SLC"), a 3i Co. subsidiary, certain defendants falsely stated that SLC had attained "the necessary profitability" in 1970 when in fact it had sustained a net earnings loss;

4) that defendants falsely declared to the public that certain purchases of assets were "major viable acquisition[s]" when in fact they were not;

5) that defendants, through the Reports and Bulletins of defendant Brownstein (a securities analyst employed by Marine Midland), understated earnings for fiscal year 1970, fiscal year 1971, and fiscal year 1972, and deceptively detailed the financial terms of the data bank license agreements; and

6) that defendant Brownstein failed to disclose the information he received in a letter addressed to him from Brodsky dated June 23, 1971, which letter stated that 3i Co. could not be responsible for the accuracy of future earnings projections.

With respect to the motions to dismiss the amended complaint for failure to allege fraud and conspiracy with particularity, Rule 9(b), Fed. R. Civ. P., requires that the plaintiff set forth the specific facts and circumstances which he alleges constitute fraud. As the Court of Appeals said in Segal v.

Gordon, 467 F.2d 602, 607 (2d Cir. 1972):

> "'Mere conclusory allegations to the effect that defendant's conduct was fraudulent or in violation of Rule 10b-5 are insufficient' [citing Shemtob v. Shearson, Hammill & Co., 448 F.2d 442, 444 (2d Cir. 1971)]; '... there must be allegation of facts [in a complaint under Rule 10b-5] amounting to deception in one form or another.' [citing O'Neill v. Maytag, 339 F.2d 764, 768 (2d Cir. 1964)]."

In discussing the rationale behind this rule, the Court of Appeals said:

> "Rule 9(b)'s specificity requirement stems not only from the desire to minimize the number of strike suits but also more particularly from the desire to protect defendants from the harm that comes to their reputations or to their goodwill when they are charged with serious wrongdoing." 467 F.2d at 607.

Because allegations of fraud made against accountants and others whose business depends on clients' trust and confidence can threaten their entire professional status, Rule 9(b) requires that plaintiffs set forth more completely than in an ordinary complaint the factual circumstances that allegedly entitle them to relief. See Frazier v. Stellar Industries, Inc., 72 Civ. Civ. 2829 (C.D. Cal. memorandum opinion filed November 15, 1973).

In light of the above, the Court finds that the amended complaint here does not meet the requirements of Rule 9(b). While the plaintiffs proceed pro se, the Court notes that since both are attorneys, the pleadings herein will be held to the same

standard as if the plaintiffs were represented by counsel. The amended complaint's allegations are made "on information and belief," contrary to Rule 9(b). Segal v. Gordon, supra at 608. The amended complaint does not set forth the dates on which either of the plaintiffs made purchases or sales of 3i Co. stock, nor does it state whether the plaintiffs relied on the statements and declarations alleged to have been false and misleading. While the amended complaint alleges that defendants made "misleading statements", "conspired and schemed", "aided and abetted" each other, and "deceptively declare[d] to the investing public" that 3i Co. had made "major viable acquisitions", these statements and declarations are not identified nor particularized as to when they were made, to whom they were addressed, or whether they affected or related to transactions in 3i Co. stock. Nor do plaintiffs allege in what respect the declarations and statements were false, misleading, or deceptive except to make conclusory allegations such as, for example, that the data bank license purchased by 3i Co. was "worthless" and that the defendants "approved, authorized and/or acquiesced in the fraud perpetrated upon plaintiff and the Class." Since plaintiffs have had ample prior opportunity to frame a complaint meeting the requirements of Rule 9(b), permitting a further opportunity to amend the complaint would only serve to delay the ultimate disposition of

this action. Accordingly, defendants' motions to dismiss the amended complaint are granted, without leave to amend.*

It is so ordered.

Dated: New York, N. Y.
March 29, 1974

Inh B. Bonsal
U. S. D. J.

* Because of this disposition of the motions to dismiss the amended complaint for failure to allege fraud and conspiracy with particularity, the Court does not reach the motions to dismiss for lack of personal jurisdiction nor the motion for summary judgment. With respect to the motion for class action determination, the Court notes that plaintiff Felton, though an attorney, is a single practitioner whose experience has been in the "negligence field," rather than in securities litigation. It appears from his testimony and exhibits at a deposition of plaintiff that he made five purchases of 3i Co. stock, all through the same broker (defendant Nissan, who is an employee of Walston) between July 9, 1970 and June 7, 1971. On all but the last two purchases the stock was later sold at a substantial profit. Plaintiff has never before been designated a class representative nor has he served as counsel to a class in any sort of class action. Plaintiff stated at his deposition: "I could not afford the time it would take on this particular case if I didn't have [a fee for representation of the class] in mind. That is one of the main purposes of Rule 23." Accordingly, the Court finds that Mr. Felton's experience and skills in negligence litigation do not qualify him adequately to protect the interests of the class he seeks to represent.

Moreover, since the amended complaint names a large group of defendants connected only by a conclusory allegation of conspiracy, the Court is not persuaded that the questions of law and fact sought to be raised therein are common to the alleged 8,000 or more members of the class; nor is it apparent that if there are such common questions, they would predominate over individual questions.

For the foregoing reasons, therefore, the Court would deny the plaintiffs' motion for an order permitting this action to proceed as a class action. See Rule 23, Fed. R. Civ. P.

JUDGMENT OF DISTRICT COURT
(Filed April 3, 1974)

APR 3 1974
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

ROBERT R. FELTON AND EDWARD J. EGAN,
Plaintiffs, :

73 Civil 2200(DBB)

JUDGMENT

-against- :

WALSTON AND CO., INC., ET AL., :
Defendants.

- X

Defendants having moved the Court to dismiss the amended complaint, and the said motion having come on to be heard before the Honorable Dudley B. Bonsal, United States District Judge, and the Court thereafter on March 29,1974, having handed down its memorandum decision granting the said motion and dismissing the amended complaint, it is,

ORDERED, ADJUDGED AND DECREED, that defendants, WALSTON AND CO. INC., ET AL., have judgment against the plaintiffs, ROBERT R. FELTON AND EDWARD J. EGAN, dismissing the amended complaint.

Dated: New York, N. Y.
April 3, 1974

Raymond F. Burghardt
Clerk

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APR 8 - 1974

5-20-74- Bill of Costs as taxed in the amount of $1,760.19 in favor defendants Marine Midland Bank - New York and Joel Brevenstein and added to the judgment.

Raymond F. Burghardt
CLERK